# DEBATES IN THE TEXAS CONSTITUTIONAL CONVENTION OF 1875

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# Debates in the Texas Constitutional Convention of 1875

EDITED BY

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*To My Wife*

# PREFACE

Publication of the debates of a convention which formed a state constitution that has been in use for more than fifty years, would seem to require no argument for its justification. No official report of the debates was kept or published by the Texas Convention of 1875, and this effort to supply such a report had to draw upon the contemporary newspapers for the material presented. Of those papers the most useful was the *Daily State Gazette* (Austin). Other useful papers were the *Austin Statesman, Dallas Herald, Galveston News, Houston Telegraph,* and *Panola Watchman* (Carthage).

The committee reports, ordinances, resolutions, motions, substitutes, etc., were printed in the *Journal* of the convention. Only enough of the subject before the convention from time to time has been reproduced in the present volume to make the debating clear. Since both the *Journal* and the present work are arranged chronologically, and since the *Journal* is very well indexed, it was considered unnecessary to make page references to the *Journal* when referring to majority and minority reports, ordinances, substitutes, etc. The editor's summaries of the debates are in the past tense; but the exact words of the delegates, when available, were used and quoted. In the latter case I have followed the speaker's punctuation and paragraphing exactly.

The present work was undertaken while the editor was serving as Adjunct Professor of History at The University of Texas, and was begun at the suggestion of Mr. E. W. Winkler, Librarian of The University of Texas, and Dr. E. C. Barker, Professor of American History in the same university. I wish to acknowledge their many helpful suggestions.

S. S. McKay.

Lubbock, Texas, April, 1930.

# DEBATES IN THE TEXAS CONSTITUTIONAL CONVENTION OF 1875

## FIRST DAY

### MONDAY, SEPTEMBER 6, 1875[1]

Obeying the instructions of Governor Richard Coke in his proclamation of August 23, 1875, the delegates to the Constitutional Convention assembled in the Hall of Representatives, in the City of Austin, at noon on Monday, September 6, 1875.

### *Permanent Organization Effected*

Major Charles S. West, of Travis, called the convention to order and suggested General J. W. Whitfield, of Lavaca, for temporary chairman. This was agreed to without opposition, and General Whitfield took the chair. Eighty-one delegates answered to their names, and permanent organization was effected. Mr. E. B. Pickett, of Liberty, was elected President of the Convention on the second ballot. Mr. Leigh Chalmers, of Travis, was made Secretary, and Mr. Joe Owens, of Galveston, Sergeant-at-Arms.

Organization for the first day was completed by the appointment by the President of a printing committee, a committee to determine rules of order, a committee on standing committees, and a committee to notify the Governor that the Convention was ready to proceed to business. The Sergeant-at-Arms was directed to arrange for the drawing of seats by the delegates.

## SECOND DAY

### TUESDAY, SEPTEMBER 7, 1875[2]

Judge John H. Reagan, of Anderson, reporting for the committee on additional officers for the Convention, suggested two Assistant Secretaries, one Assistant Sergeant-at-Arms, three pages, and two porters. The officers suggested by the committee were elected.

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[1] The proceedings for this day were taken from the *State Gazette* (Austin), September 7, 1875.

[2] The proceedings for this day were taken from the *State Gazette* (Austin), September 8, 1875.

A message from the Governor was then read. In it the Governor stated that he had the honor to tender the earnest coöperation of all the officers of the State Government, as far as their aid might be desired, in furthering the labors and advancing the purposes of the Convention. With that purpose in view he had asked for reports from the heads of all the State Departments, and from the Chief Justice of the Supreme Court. The Governor said that the reports were then in the hands of the printer and would be laid before the Convention within the next two or three days.

JUDGE REAGAN moved that the Governor's message be laid on the table until the standing committees were appointed, at which time the message, or such portions as were thought necessary, might be referred to the appropriate committees.

MR. MCLEAN, of Titus, said he could not see the use or utility of referring the message and accompanying documents to committees of the convention. The information promised and the message might be of use to them as members of the Convention, but any further reference to any communication from any department of the Government was not applicable to the Convention. Of course they should feel grateful to the Governor for the information he had kindly tendered them, but he did not think any such information or document should take the course usually pursued in legislative bodies respecting such documents. He would, therefore, vote against the motion of the gentleman from Anderson.

JUDGE REAGAN said that they were informed by the message of the Governor that he had caused the heads of the different departments to prepare reports of official information for the use of the Convention. In some respect or other that information would be desired by committees of the Convention. As he understood it, parliamentary usage required that when a message came from the Executive Officer of the State to a legislative body, the several parts of the message requiring further consideration were referred to appropriate committees. He knew they did not occupy the usual relations of a legislative body to the executive, yet the coöperation of the executive department of the Government and the assistance it might give them, might be of great service in their deliberations, hence it seemed to him that the message should be laid on the table and when the committees were formed, portions of it and the accompanying documents might be referred to the proper committees.

COLONEL CHARLES DEMORSE, of Red River, said that while he had the greatest feeling of respect for the Governor, he agreed with his colleague from Titus. He was of the opinion that neither the message nor any portion of it should be referred to any committee. At the same time he felt grateful to the Governor for his courtesy and attention. He desired to treat his Excellency with the greatest possible respect, but did not think it at all proper to refer the message to any committee.

MR. W. BLASSINGAME, of Grayson, said he concurred heartily with the member from Titus. They had no further use for the message. If they required any further information they would ask it respectfully and the Governor would give it cheerfully. It was not usual to refer such matters to committees in bodies like the Convention. They had all the authority and power to ask any information they wished, and it would, doubtless, be supplied them. He thought, however, that the message should be taken kindly by the delegates.

MR. MCLEAN rose to point of order. As he understood the gentleman from Anderson, he moved what the President stated and indicated, that the message—or rather the communication, for it was not a message—should take a particular course. If Judge Reagan would separate his motion, he had no objection to its being laid upon the table, but he did object to its reference to a committee.

JUDGE REAGAN stated that in making his motion to lay upon the table he went beyond what was first indicated in his suggestions, but the motion was simply to lay on the table.

THE PRESIDENT stated that the explanation was not regarded as any part of the motion.

MR. MCLEAN held that a motion to lay on the table was not debatable, and that the President had shown them great indulgence. It was not, however, a motion to lay on the table merely, and if it were, it would not be applicable, as they had no table, in a strictly parliamentary sense, to lay it on. He thought they should take no action on the communication from the Governor, sent in reply to the notification from the Convention that they were assembled in convention. He asked that the President explain the status of the motion.

THE PRESIDENT said a motion to lay on the table was debatable only by relaxation of the rules of the Convention. The absence of rules was the explanation of why the rule was not enforced when the motion was made. The Convention was being governed under general parliamentary law until it adopted rules of its own.

MR. GEORGE FLOURNOY, of Galveston, at this point moved that the Convention thank the Governor for his polite and patriotic communication, and that the members avail themselves of the communication as occasion might require. His motion was carried and thus was settled the question of the Governor's message.[3]

MR. E. L. DOHONEY, of Lamar, reported for the committee on the names and number of standing committees. A motion was made to adopt the report and it was adopted.

MR. F. J. LYNCH, of DeWitt, moved to strike out the Committee on Federal Relations. He said the Convention had nothing to do with the Federal Government, no "treason" was being thought of in the Convention, the State was supreme in its authority, and was capable of making a Constitution without conflicting with the Federal authorities at all, and hence he saw no good that was to result from submitting questions to a Committee on Federal Relations. There were able jurists in the Convention to see that a new Constitution should not conflict with the Federal powers.

MR. DOHONEY said the question had been raised in committee as to the necessity of a Committee on Federal Relations. They had found on examination of the precedents of a large number of states which had adopted new constitutions, that they had included a Committee on Federal Relations in their list of committees, and that but a few states had not done so. It was suggested and concurred in by the committee that Section II, Article 6, of the Constitution made it the supreme law of the land. Finding that the Convention in the discharge of its duties would be bound by and subject to the supreme law of the land, and thinking it would be well to have a Committee on Federal Relations, to whom should be referred any proposition which might conflict with Article 6, whose duty it should be to investigate and report, in order that they might steer clear of any collision with the Federal authorities, they had put such a committee down on the list. There were persons in parts of the State who were under a misapprehension that the Convention might take some action conflicting in its character with the Federal Government, and such a committee as was proposed would reassure them.

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[3] *State Gazette* (Austin), September 8, 1875.
*Journal Constitutional Convention*, 1875, 13.

MR. LYNCH replied with a repetition of his arguments. He had had reference more particularly to the amendments to the Constitution of the United States. He thought delegates should not carry their humility so far as to go out of their way and appoint a Committee on Federal Relations.

MR. R. SANSOM, of Williamson, had no objection to the appointment of the committee. He thought that the proper time for the argument of Mr. Lynch would be when the report of the committee was submitted. The ayes and nays were called for. Mr. Lynch's motion to strike out the Committee on Federal Relations was lost and the report was adopted.

## THIRD DAY

### WEDNESDAY, SEPTEMBER 8, 1875[4]

JUDGE REAGAN, Chairman of the Committee on Per Diem and Mileage, reported a resolution providing that the pay of members of the Convention should be $5 a day, and that their mileage in traveling to and from the Convention should be $5 for every twenty-five miles traveled, the distance to be computed by the most direct route. The resolution provided also for the appointment of a committee to ascertain the distance to be traveled and the mileage due each member. Judge Reagan observed that the resolution would make the mileage of the Convention three-eighths less than the members of the Legislature had received for several years past, and would provide better restrictions for the computation of mileage by circuitous routes.

MR. McLEAN submitted a minority report accompanied by a resolution providing for pay of $4 a day for delegates with mileage at the rate of 15 cents a mile in going to and from the Convention, mileage to be computed by the most direct route. The minority report would have had the certificate of the President of the Convention, countersigned by the Secretary, be made the voucher necessary for the delegate to use in drawing his salary and mileage from the treasury.

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[4] The proceedings for this day were taken from the *State Gazette* (Austin), September 9, 1875.

JUDGE REAGAN moved the adoption of the majority report.

MR. JOHN HENRY BROWN, of Dallas, said the majority report made no provision for fractions of mileage.

JUDGE REAGAN replied that the object of the committee was to fix the rate of mileage.

MR. MCLEAN objected to the adoption of the majority report as it would in effect adopt the resolution.

JUDGE REAGAN, in lieu of his first motion, moved to lay the majority report on the table, which was carried. He then moved the adoption of the resolution accompanying the majority report.

MR. MCLEAN offered the minority report as an amendment, and yeas and nays were called for.

JUDGE REAGAN spoke for his report. He said that some reduction of the general expenses of the Government was expected by the people. Hence the committee had felt the necessity of commencing such work at the beginning of the proceedings, by regulating the appointment and payment of officers and the per diem and mileage of members. They had tried to avoid extremes and adopt a reasonable course. After consultation with a considerable number of delegates they concluded that $5 a day, together with $5 for every twenty-five miles traveled in coming to and returning from the Convention, would meet the approbation of members of the Convention. This pay would about cover the loss of time incurred in making the journey and would equalize it so as to make the days consumed in travel approximate to the days spent in actual work in the Convention. This would make the mileage average about 30 cents a mile. It was thought by the committee to be advisable to give to members reasonable compensation for both mileage and the time spent in traveling. No member could be paid in excess of what strict justice demanded, as the number of miles traveled would be determined by the committee of three appointed under the resolution.

MR. DOHONEY said he opposed the minority report. As he understood it the only effect of passage would be to pay delegates less than the officers of the Convention, the latter receiving $5 and the former $4 per day.

MR. McLEAN said he was glad the chairman of the committee had made the statement he had, although if any explanation was necessary it should have come from those of the minority report. He had never in his life seen more patient investigation than had been devoted to this question by the committee of fifteen. They had labored to agree and the difference was not so much between them as their understanding of the opinions of the people they represented touching the question of mileage and per diem. The minority were embarrassed by being forced into the position of opposing gentlemen so distinguished for ability, patriotism, and fairness, and so possessed of the confidence of the people. The minority considered themselves as instructed by their constituents to take the position they had. He, as a member, represented not so much the opinions of the committee as he did the emphatic instructions of a portion of his constituents. Four dollars per day and 15 cents per mile was what the minority had suggested. They would be giving delegates as much as $50 a day under the recommendations of the majority report when delegates traveled by rail from the Capitol to their homes at a distance, while members of equal merit living near the Capitol would get nothing. The minority report was in favor of placing all members on an independent and equal footing. Hence they recommended $4 a day, though taking the rate of mileage they recommended, the average would be about the same as that recommended in the majority report. The minority report did not intend their proposition for the per diem and mileage of delegates to establish the pay of future Legislatures. On the contrary, he, as a member of the Convention, should be in favor of a higher rate of pay for members of the Convention. It would be unfortunate if they should allow themselves a higher rate of pay than should be allowed future members of the Legislature. The minority of the committee favored a safe amount, so that in no event would it be possible for the Convention to establish a lower rate for future Legislatures than delegates took from the State as pay for their services. He might not differ in opinion from the majority of the committee individually, but he knew he represented the wishes of his immediate constituency. Unless the Constitution met the wishes of the people their labors would have been in vain. The object of the minority report was to disarm the elements of the opposition that were sure to be arrayed against the ratification of any instrument they might make. It would be well in their effort for reform to look to it that they did not give their enemies an opportunity to fight them at so early a day in their labors. It was useless for gentlemen to oppose their notions of what was proper to the expressed sentiments of the people, or even to their prejudices and whims, or the labor and expense of the Convention would be incurred in vain. If the people of Texas desired a Constitution according to their ideas of the cost of government they ought to have it. If future State Governments proved burdensome and onerous it ought not to be the fault of that Convention. If a Constitution were made in accordance with the wishes of the people, they would know that they, and not the Convention, should be blamed for anything it might contain which was not in harmony and true consonance with a State Government. His remarks were not prompted by any worthless and contemptible desire for reputation. That motive was too low to be attributed to any member of the Convention. With reference to the pay of officers, the minority report proposed to allow them a just and fair rate of compensation. They expected the same rate would be allowed the officers and employees of future Legislatures, but so far as members were concerned they thought best to make an individual sacrifice, rather than risk the safety and ratification of their work.

MR. J. L. GERMAN, of Fannin, moved to strike out 15 cents in the minority report and insert 10 cents per mile. He said that the question was a difficult one to regulate. Fifteen cents a mile would pay members $7.50 a day over and above their necessary expenses while traveling. Ten cents a mile would pay all his expenses and the time expended in traveling. Of course those who traveled by stage would incur more expense than those who came by rail or on horseback.

MR. DEMORSE supported the majority report. He said the committee had considered the question very carefully. He was one of those who had always condemned the waste and expense of useless legislation, but Texas people were a reasonable people and did not expect their delegates to base their compensation, or that of future

Legislatures on a low and inadequate rate of compensation. He did not expect to belong to any future Legislature, but had no hesitancy in fixing the pay at such a reasonable rate—or more than reasonable rate—so that gentlemen could afford to come to Austin and represent the State. They might all conscientiously differ on the question. He accorded to the minority the utmost conscientiousness, but he entertained a higher estimate of the intentions of the people than they entertained. They seemed to imagine that anything but a low rate of compensation would be objected to by the people. He thought his constituency was a reasonable one. They knew that most of the members of the Convention were gentlemen who did not make, but sacrificed money in coming to Austin. Whatever the exceptional case might be, the majority of the people, while demanding economy, wanted a reasonable economy. He, for one, did not fear to go before his constituency, and they were the same in part as those represented by the gentleman from Titus. He hoped the members of the Convention would act with dignity and self-respect. It might be that some demagogue would endeavor to obtain a little popularity, because members demanded something more than a day laborer's wages for their services. He did not take the position taken by Mr. Stephens in Congress, that large pay was necessary to secure the services of men of ability, but he did not believe that any gentleman could afford to sacrifice his self-respect when he fixed the rate of his own services and that of those who were to come after him. He was in favor of fixing a fair and legitimate amount.[5]

MR. JOHN JOHNSON, of Collin, said he differed from the gentleman from Titus in one respect, and that was in not regarding the rate of compensation paid to members of the Convention as governing that of future Legislatures. The pay of the latter had been $8 per day and the opinion was that there had been too much legislation at that rate, so much in fact that the very best lawyers did not understand it. With reference to the rate of pay at which gentlemen could afford to serve the people, as good men as he was could be hired in his neighborhood at $1 a day and board themselves. (Laughter.) His constituency did not propose to send men of the highest talent to represent them, because the people had had too much of talent.

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[5] Mr. DeMorse was the editor of the *Clarksville Standard*. He had served in the Thirteenth Legislature of Texas.

They were in favor of lower salaries and a lower order of talent. The officers did not get mileage. Besides the members were willing to work and expected to do so at lower pay.

MR. S. H. RUSSELL, of Harrison, said he thought it was not intended that they should work for nothing, but that they should be reasonably well paid for the work they did. The gentleman from Collin had said that good men could be obtained for $1 a day. It might turn out that compensation at $1, $2, or $3 a day might be very dear to the people. He thought the gentleman from Titus was pandering to popular clamor. He did not think that the people expected that the only compensation delegates were to receive was their board bills and their actual mileage. If that was the idea of retrenchment and reform they might as well resolve to serve the people gratuitously for the sake of their patriotism. He felt that it should be the idea of the Convention to limit legislation and the cost of it. He did not think the services of a legislator for making laws under a Constitution were entitled to a higher compensation than that paid to the delegates who framed the Constitution itself. In conclusion he proposed as a substitute for the whole question "that the delegates of this Convention do serve in this Convention without per diem pay or mileage."[6]

MR. E. S. C. ROBERTSON, of Bell, said that while he was prepared to vote for retrenchment, he did not wish to treat the people unjustly. The constituency which he represented expected to pay a fair compensation to the members. He regarded the majority report as a precedent for the compensation of future Legislatures and hoped it would be so regarded by others. He would vote for the majority report.

MR. G. MCCORMICK, of Colorado, said he thought it would be well for each delegate to go to the Treasury and say what he considered his services worth, so they did not exceed $5 a day.

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[6] The *Daily State Gazette* (Austin), September 9, 1875, reminded its readers that Mr. Russell was sheriff of Harrison County during the Convention, hence could afford to make the attempt to make capital for his party by proposing to serve the people without pay. Harrison County was strongly Republican, and had a large majority of colored voters. Mr. Russell was one of the Republican leaders in the convention.

MR. W. T. G. WEAVER, of Cooke, regarded the pay of delegates as a precedent to future Legislatures. He was in favor of proper, but not an unjust retrenchment. He was aware that minorities had rights, and that there was opposition to the Convention. The party which made the existing organic law and gave $8 a day and expensive mileage to legislators, were enemies of the Democratic administration and were not the friends of retrenchment and reform. The delegates were pledged, to reform, especially on the question of reducing taxation, the salary question being included in it. He favored the majority report. He did not desire to reflect at all on the gentlemen submitting the minority report, but it did seem to him that they were taking an unwise step. He differed from his friend from Collin, who would simply place a delegate on a level with an ox-driver. He, Weaver, was not an aristocrat, but he thought the position of delegate from the people was one worthy of respectful and respectable compensation.

Mr. Russell's amendment was lost by a vote of 8 ayes to 79 nays. Upon motion of Mr. F. S. Stockdale, of Calhoun, the amendments offered by Messrs. German and McLean were tabled. The majority report was then adopted, and the majority resolution, offered originally by Judge Reagan, was before the Convention.

Mr. German moved to strike out "five dollars for every twenty-five miles traveled" and to insert "two dollars and seventy-five cents," and add "five dollars for every twenty-five miles traveled otherwise than by rail." But the motion was lost, and the Reagan majority resolution was finally adopted.

## FOURTH DAY

### THURSDAY, SEPTEMBER 9, 1875[7]

(The fourth day of the Convention was consumed entirely by the introduction of resolutions. In most cases the resolutions were, by vote of the Convention, referred to appropriate committees. Several of the resolutions formed the bases of spirited debates when the committees reported to the Convention later on.)

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[7] The proceedings for this day were taken from the *State Gazette* (Austin), September 10, 1875.

## FIFTH DAY

### FRIDAY, SEPTEMBER 10, 1875[8]

MR. COOK, of Gonzales, chairman of the Committee on Printing, reported the following proposals: The *Statesman* would furnish the required report, 900 copies, at 4 cents; 1,350 copies at 3½, and 1,800 at 3 cents. The *News* offered twenty papers to each delegate at 2½ cents. The proprietor of the *State Gazette* proposed to furnish the *Gazette* with full stenographic report of the proceedings of the Convention at 5 cents each, twenty copies for each delegate. The *Galveston News* offered to supply their paper in any number of copies at 3 cents. The *Telegraph* was offered, with the requisite report, at 5 cents for 500 copies, and cost of the composition of the journals. The committee did not feel at liberty to contract for the papers, but reported the above facts and asked for further instructions.

MR. COOK said that the committee did not feel authorized to contract for the papers of any publishing company, because of the individual prejudices of members. He suggested that Colonel Elliott, editor of the *State Gazette*, claimed consideration on the ground of the excellency of the *Gazette's* stenographic reports. But the committee thought it their duty to ask for instructions before proceeding further.

MR. MARION MARTIN, of Navarro, moved that the report of the Committee on Printing and Contingent Expenses be received, and that the further consideration of subscribing for newspapers be indefinitely postponed.

MR. MCLEAN opposed the adoption of the resolution and offered as a substitute that the Convention subscribe for 1,800 copies of the *State Gazette.* He said that delegates had seen enough to know that the proceedings were reported correctly only by that paper. He thought the people he represented expected the convention to make an appropriation for stenographic reports, in order that they might have the benefit of accurately preserved proceedings. He was very desirous that his constituency should have access to correct reports of the work of the Convention. His resolution was that the Committee on Printing and Contingent Expenses be instructed to contract with John D. Elliott for 1,800 copies of the daily *Gazette*, containing a synoptical report of the proceedings of the Convention with a statement of the position of each member who might express himself before that body. The substitute was lost.

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[8] The proceedings for this day were taken from the *State Gazette* (Austin), September 11, 1875.

MR. McCORMICK, of Colorado, then offered as a substitute to the motion of Mr. Martin that each member be allowed to subscribe for twenty copies of papers containing the proceedings of the Convention, as he might select, and at a cost not to exceed 3 cents a copy.

MR. McLEAN said he considered the question a very important one. They desired that the work of the Convention might be approved by the people. They expected to use their best efforts in the work and desired the approbation of the people, not personally to themselves as to representing the people of Texas on that floor, but of the Constitution they should submit for ratification. He thought the people were unanimous in a desire for a publication of the proceedings of the Convention, in order that they might know what the Convention was doing in time to vote intelligently upon the work submitted to them. Under the resolution of the gentleman from Colorado they were allowed to publish the proceedings, not by a paper friendly to the Convention and its purpose, but by any paper the delegates might select. He had no individual preference for papers or editors, but desired simply to take the paper which would most faithfully report the proceedings, and which would most honorably advocate what it thought for the best interests of the State in the action of the Convention. Delegates could assist or retard the work of the Convention by the manner in which they acted upon the printing question. If they desired to be sustained and helped they should depend upon their friends. He had no particular friendship or love for the *State Gazette*. Gentlemen who might have taken time to examine the course of that paper knew that he was under no obligations to it, but he knew that the *Gazette* was faithfully reporting the proceedings of the Convention, and that it was superior to others he might name, which were charged with being unfriendly to the Convention and were endeavoring to strike a blow at the Convention in the interests of officeholders. Knowing the patriotism and honesty of the *Gazette,* he desired that if patronage should be extended to any, that it should be given to the paper which had been the friend of the Convention, which had always represented the State of Texas on public questions, which was upright, which lent itself to no cliques or rings, which reported most faithfully the Convention's proceedings, and which would advocate what the delegates would present to the people. Such a paper should have their patronage, and a paper which struck the Convention at every opportunity should not have their encouragement. They all knew the influence of the press for good or bad, and should not vote their patronage to sustain a press which would aim to defeat the objects of the Convention. For the reasons stated he insisted upon the adoption of some such resolution as that contained in the substitute he had presented.[9]

MR. MARION MARTIN said he was very much surprised that the last speaker should favor only $4 per diem to members, and yet favor that expense in newspapers. He believed that in advocacy of the first subject he had been imbued with a spirit of retrenchment and reform. He, Mr. Martin, proposed to subscribe for what papers he wanted personally. If they were to subscribe out of the public funds, to do the thing essentially, they ought to subscribe for papers by the thousands, for twenty copies sent back to their constituents would be a mere farce.

JUDGE REAGAN said if the members of the Convention saw proper to subscribe for twenty papers a day, of course they could do so. But the way it operated was generally found to be as follows: They sent a copy to one constituent one day and to another the next day, but persons who received them did not get them consecutively, and could obtain no intelligent view of the Convention. Three papers published in Austin were publishing abstracts of the proceedings of the Convention and would go to whomsoever might subscribe for them. The *Telegraph* and *Galveston News* were publishing synopses which went to their subscribers. Other papers had correspondents in Austin, or took their accounts from the papers referred to, and would inform their subscribers of the proceedings of the Convention, so that for the purpose indicated—informing the public of their doings—they did not need the number of copies asked for in the resolution. But if they needed what was suggested by the gentleman from Titus; if they wanted to pension a paper, to get it as an organ for the Convention, then he cared not what paper it was, he opposed it, for he had looked for many years upon organs as an evil to the country and a curse. Outside of the want of utility of subscribing for the papers asked for, there was another question pertaining to it. The people had demanded that the expenses of the State Government should be reduced. In obedience to the general demand they had met, and one of the earliest acts was to deduct $270 a day from the per diem of members. In addition they had reduced the expenses of the Convention to one-third of that of the last House of Representatives. They had provided that the mileage of members should not exceed one-third of that formerly paid. Thus far they had started off in obedience to the will of the people in maintaining an economical expenditure. If they should, for the purpose of conferring benefit upon others, pass the proposition of the gentleman from Titus—not then before them—or that of the gentleman from Colorado, they would add $54 a day to the expenses of the Convention. Multiplied by the number of days they would probably be in session it would make a large sum, but he would not object so much to it if there were compensating benefits. Was not the reading public advised through the current channels of the action of the Convention? If they sent a copy of a paper occasionally, and failed to send it regularly, the party did not get the whole story of the Convention and the papers sent became useless to him. He thought the proposition was wanting in utility, as it did not furnish a consecutive report. If they were to support papers friendly to the Convention and its objects, then they would not be doing their whole duty to confer their patronage on a single paper. The great mass of the Democratic papers of the State, as far as he knew, were supporting the objects of the Convention. Then why should they discriminate, when all were promoting the objects of the Convention, in securing a good Constitution? He regretted having consumed so much time, but they had to meet the issue. If they were to maintain the unity of purpose they had commenced in the convention, they should not vote needless expenditures of the public money without receiving corresponding benefits. He would vote to indefinitely postpone the whole subject.

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[9] Mr. McLean was a man of considerable parliamentary experience, having represented an eastern Texas district in the Federal Congress. His praise of the *Gazette* was justifiable. It reported the proceedings of the Convention from six to ten times as fully as did its nearest rivals, and was the most consistent of all the papers in defending the action of the Convention throughout its sessions. It is unfortunate that Mr. McLean's position was not sustained by the convention.

MR. McLEAN said the gentleman from Anderson had charged him with having proposed to pension a paper, to advocate before the people anything they might do, in order that their work might be approved. He replied that he did not wish to do that, but desired to protect the people against the secret influence which had been at work since the question of a Constitutional Convention was proposed to the people. Everybody knew that the people desired a Convention, but one Legislature after another had postponed it from some cause, and when it was finally presented to the people there was still an influence, latent and insidious, the origin of which he did not intend to trace, which opposed all its influence to the call of a Convention and the adoption of a Constitution. He repeated that if the people were to be informed of their proceedings—and he knew their desire and willingness to pay for them—they desired that such information should come through a medium friendly to the Convention and its interests, and what they understood to be their true interests. He knew that prejudices were at work. He knew that gentlemen did not like this and that newspaper, and this and that editor. When men sought the positions of great men, and newspapers by their notices contributed to or retarded their progress to the ends desired, such men were apt to classify the politics and estimation of newspapers and were controlled, perhaps, in their public work by their prejudices and estimates of newspaper men. But having no reputation of that sort, and not desiring any, he simply proposed that the paper advocating the interests of the people in their Convention, publishing faithful reports, and that newspaper managed by a man known to be friendly to the interests of the Convention and of promoting the desires of the people, receive the patronage of the Convention. Hence, came the suggestions he had made and was prepared to defend. He cared not how much capital might be sought to be made out of his advocacy of a man who might be at that time unpopular with the politicians, but whom he knew occupied a high position in the estimation of the people of his state. He favored him because he was friendly to the objects of the Convention, and considered him more capable of doing the work than the managers of the other papers. It was beneath the dignity of delegates to go into personalities. The honorable member from Anderson was above anything of that sort. His history as a public man, his reputation as a man of sense and propriety, placed him above anything of that sort; but he did feel that he had made an unkind allusion. He hoped he had misunderstood the gentleman from Anderson in connection with the subject, and perhaps he had done so. In reply to the charge of advocating the pensioning of a newspaper, he would state that they were not there to support those papers which supported their personal or individual interests before the people, and he had never claimed that they were.

JUDGE REAGAN interrupted to state that he wished to say that he had not used the words ascribed to him, or if he did he did not intend to do so. He had referred to the suggestion of compensating papers to support the action of the Convention.

MR. MCLEAN said he knew the gentleman would not make a remark of that sort. His character was above it. He hoped the Convention would return to the proposition he had made, but which had been voted down. They could resurrect it and give the *State Gazette* an order for twenty copies a day for each member of the Convention.

MR. MCCORMICK asked why Mr. McLean proposed to give the *Gazette* 5 cents a copy when he could get other papers for 3 cents a copy.

MR. MCLEAN said he did not know the price quoted by the committee, but he would prefer giving the *Gazette* 5 cents to giving the other papers 3 cents. Some papers were read and some were not. The people were willing to ascertain what the *Gazette* contained. They knew its sentiments. They were not willing to read the other papers, and would not read them even at the discriminating price of 3 cents. But they would be willing to give the *Gazette* 5 cents for an accurate account of the proceedings.

MR. J. F. JOHNSON, of Franklin, said he feared his colleagues would lead them back into the old rut they were trying to get out of.

In his opinion, Mr. McLean had used nothing but assertion. He, for one, was not willing to give any paper 5 cents a copy when he could get another for 3 cents.

MR. ROBERTSON, of Bell, said he did not propose to take part in the discussion on either side, but merely wished to submit a few practical remarks. Subscription for twenty papers, with postage added, would cost $7,000. If the proposition to subscribe for papers should be voted down, he thought the best plan would be to employ a stenographer, which would not amount to one-seventh of the expense.

(Mr. John Henry Brown in the chair.)

THE PRESIDENT *pro tem* said the question was should the substitute of the gentleman from Colorado (Mr. McCormick) authorizing subscriptions for twenty copies of any daily papers, which the delegates might select, at a cost not to exceed 3 cents, prevail.

The substitute was lost.

THE PRESIDENT *pro tem* then said that the question recurred on the motion of the gentleman from Navarro (Mr. Marion Martin) to indefinitely postpone the whole subject.

MR. MCLEAN asked if it was the opinion of the Chair that if the pending motion prevailed it would dispose of the question for the whole of the session.

THE PRESIDET *pro tem* remarked that he had some doubts on the subject.

MR. STOCKDALE said that it would lose the question as he understood it.

The yeas and nays were called for and the whole question was indefinitely postponed by a vote of 48 yeas to 35 nays.

## SIXTH DAY

### SATURDAY, SEPTEMBER 11, 1875[10]

### *The Printing Question*

MR. W. L. CRAWFORD, of Marion, moved the following:

*Resolved*, That the special committee on printing be required to report a resolution authorizing the President to receive sealed proposals at his desk, for three days after the report of said resolution, for the printing of the body, and that at the expiration of said time to open proposals, and thereupon, by the consent of this Convention, to award said printing to the lowest responsible bidder.

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[10] The proceedings for this day were taken from the *State Gazette* (Austin), September 12, 1875.

It was referred to the Committee on Printing.

MR. STOCKDALE moved to amend by striking out the words "the special committee on printing be authorized to report" and insert "the President be authorized."

MR. CRAWFORD offered the following as a substitute for his resolution and the amendment:

*Resolved*, That the President of this Convention be authorized to receive sealed proposals at his desk for the printing of this body until Monday, the 13th inst., at 12 o'clock, at which time he shall open the same and award the said printing, by the consent of this Convention, to the lowest responsible bidder.

(Mr. Dohoney in the chair.)

MR. DEMORSE, of the Committee on Printing, called attention of delegates to the fact that there was a regular Committee on Printing, which seemed to be ignored in the resolution proposed. The printing of the rules and committees had been left in the hands of the Clerk. The proposition to take this question out of the hands of the committee looked, to say the least, a little discourteous, but if the proposal to do so would leave the committee without further duty and the Convention could resolve itself into a printing committee, he had no objection. It would be well, however, for the Convention to decide whether or not the committee had further duties to perform. If not, they had a sufficiency of other duties to attend to.

MR. STOCKDALE moved to refer the whole matter of printing again to the Committee on Printing.

MR. PICKETT advocated the same course.

MR. N. H. DARNELL, of Tarrant, said that he would be very happy to be relieved as a member of the committee. It had delicate questions to deal with, and he would rather serve on any other committee. The committee had been trying to do its best, and was unwilling to make an incomplete report, which could result only in ill-feeling and criticism. He did not believe the Convention desired to throw any aspersions on the committee or its chairman, for both had done their best.

MR. MCCORMICK said his colleagues appeared to be afraid of newspaper criticism. After being in session six days the rules of the Convention had not yet been printed. Why such delay? He was the friend of no paper in particular, but wanted the printing done at the lowest price. The resolution took the responsibility away from the committee, who seemed to be afraid.

MR. DEMORSE said the Secretary had charge of the printing already ordered, and that the committee was willing to share all due responsibility of the Convention's printing. But the members of the committee did not see fit to contract with any bidders except the lowest, unless they did so with the approval and by the direction of the Convention itself.

MR. DARNELL said he had never shirked responsibility, and that the committee had been seeking to perform its duty faithfully. They had consulted many members in regard to papers, and not three out of any five were willing to take the same paper, hence the reference to the Convention. With respect to the other matters before the committee they would report as soon as they were prepared to do so. For his own part he had never avoided any duty, and was entirely willing for the Committee on Printing to be abolished. He was not aware that any had suffered from the absence of printed rules, and thought they were getting along fairly well under parliamentary rules. He knew that the chairman had acted in good faith and was using all dispatch. For his own part he had been ill and had been unable to render as much aid as he had desired.

MR. COOK, chairman of the Printing Committee, explained what had been done by the committee. The Secretary had been authorized to get the current work done until a contract was made. The settlement of the printing question for a body like the Convention was a difficult matter, and it could not be disposed of in an hour or a day. If they went back to the journals of every body of a similar nature which had assembled in Texas they would find that there had always been trouble in disposing of the printing. In the Convention of 1866 the delegates had experienced a similar trouble, and it contracted for ten papers for each member at 10 cents a copy, while the propositions before the present Convention varied from

2½ to 5 cents a copy, and yet it had refused to subscribe for a single paper. Some members of the Committee on Printing had been ill, but an appointment had been made for a meeting at the close of that day's business, to receive bids for the printing of the journals and the Constitution. The contract would also include the current printing for the use of the Convention. Proposals were already on his desk from the proprietors of printing establishments of Austin. Now if the matter were taken from the Printing Committee at that hour it was all right. He made no objection and only had risen in vindication of the course of the committee. If the Convention proposed to attend to the work it should abolish the committee.

MR. J. L. HENRY, of Smith, moved as an amendment that the Committee on Printing be directed to receive sealed proposals to do the printing of the Convention, and to contract with the lowest responsible bidder.

MR. JOHN S. FORD, of Cameron, said the members of the committee did not feel like staying under the imputation of shirking responsibility. He thought the records of the gentlemen who composed the committee would show that they had assumed responsibilities that the gentleman from Colorado would perhaps have dodged a little. It was not in good taste to cast imputations upon men who had done their duty for a lifetime, and some of them had done duty for Texas probably before the gentleman from Colorado was of an age to assume responsibility. It was a very difficult matter to contract for printing. Bids could be made which, while looking lower than the rest, were in reality higher. It would be almost impossible for those not acquainted with the business to decide justly.. The members of the Printing Committee were more or less acquainted with the subject, while members generally were probably not appreciative of the problems involved. The time allowed the committee had not been sufficient to do justice to the subject, and he hoped it would be prolonged. For his part he could have wished to have had no connection with the question, for it had raised a row in every Legislature that had ever been held. He intended to vote to give the printing out to the lowest bidder, and if any man was not satisfied with his conduct he knew where to find him.

Mr. McCormick said he felt like the boy who had poked his stick into the hornet's nest. The last speaker had not heard as much of the matter as he, McCormick had, and that explained his objection to delay.

Mr. Brown favored reference to the committee. No other body had ever accomplished more in the same length of time than had the Convention. They were suffering no inconvenience from delay for a few days, and in the end it would be settled in justice to themselves and the State. He hoped the committee would be allowed reasonable time. He had come to Austin to do his duty undeterred by newspapers.

Colonel Crawford maintained that the resolution relieving the committee was no imputation on them.

Mr. Stockdale renewed his motion to refer the original resolution and substitutes to the Printing Committee, which was carried.

The President at this point exonerated the Secretary from all blame concerned with the printing of the rules, and announced that they were already printed.

### *Mr. Goddin Resigns*

Mr. M. H. Goddin, of Walker, sent up a communication to the chair and asked that it be read, saying that he wished to resign and leave. The Secretary read the resignation.

Mr. Webster Flanagan, of Rusk, moved that the resignation be accepted.

Mr. Brown moved to lay it on the table until Monday.

Mr. Flanagan said it was a question of privilege, and the member had a right to resign whenever he wanted to.

Mr. McLean said the honorable gentleman did not intend to charge the State anything for coming to Austin and going back home. He offered an amendment that the mileage and per diem pay be not allowed.

The President said the amendment was out of order. If the member had been there one day only he would be entitled to the mileage and per diem pay for the time he served.

Mr. Flanagan said there need be no discussion on that score, for he understood the gentleman from Walker had sold his claims against the State of Texas for $30. Mr. Flanagan's motion prevailed, and the resignation was accepted.[11]

## SEVENTH DAY

### MONDAY, SEPTEMBER 13, 1875[12]

(The seventh day of the Convention was consumed entirely by reports of committees and resolutions which were referred to appropriate committees. No debates were reported for that day.)

## EIGHTH DAY

### TUESDAY, SEPTEMBER 14, 1875[13]

MR.. RORERTSON, for the special committee with reference to the appointment of a stenographer to report the debates, reported as follows: that the services of Mr. George Gibbons could be obtained at $10 a day, provided he confined his services to the reporting of the debates. He suggested for the committee that it would be essential to have a condensed report of the journals, which would have to be made by the Journal Clerk, as it would be impracticable for the stenographic reporter to do more than take notes and write out the debates. Mr. Robertson moved that the services of Mr. Gibbons be engaged at $10 a day to report the debates of the Convention, and that the Committee on Printing contract for the publication of same. The motion was lost.

MR. FLOURNOY rose to suggest the propriety of reconsidering the resolution voting down the employment of a stenographer. He thought he had no right to move a reconsideration, since he had voted with the minority.

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[11] Goddin was elected by the voters of the Fifteenth District as a Republican. He was an insane colored man, arrived in Austin late, and resigned after one day's service. Two weeks later, A. T. McKinney, of Walker, was elected as the seventy-sixth Democratic delegate. See *West Texas Free Press* (San Marcos), September 18, and October 9, 1875.

[12] The proceedings for this day were taken from the *State Gazette* (Austin), September 14, 1875.

[13] The proceedings for this day were taken from the *State Gazette* (Austin), September 15, 1875.

THE PRESIDENT said that any member had the right to move a reconsideration of a vote not taken by ayes and nays.

MR. FLOURNOY then moved to reconsider. He was not aware that any convention of that character had been held in which the debates had not been reported. For that and many other reasons their debates should be recorded. An important reason, and perhaps the most important one, was that they would be a guide to the courts in the future in determining upon doubtful clauses in the Constitution just what the real purpose of the Constitution was. It was impossible that they should be so very fortunate as to make a Constitution in which there would be no ambiguity in any clauses. The expression of the views of those who advocated or opposed certain clauses would be a guide—and a very useful guide—to the courts in the future, in determining the meaning of the various clauses, and the scope and intent of the Convention in relation to the clauses. He made the suggestion also because the action taken by the Convention, and the publications of such matters, would, in addition to the foregoing reasons, give some light to their constituents on the views of the various delegates on subjects entertained by the Convention. The cost would be something, but there were some things which were not dear at any price. It was to his mind of the very first consequence that, in connection with the Constitution they should frame, they should have the views of members, as they should express them, on any vote on the Constitution, and on every clause of it. The law reports, in many cases, referred to the Convention debates on the Constitution of 1845. He had a copy of the debates on that Constitution. They were full, and were exceedingly useful to any citizen, and especially to any member of the Convention then in session. The debates had been used by the courts of the State and had been found exceedingly useful to them. He made the suggestion because of the probability that their minds had been pre-occupied with other matters when the proposition came up, and that it was rejected on that account. In view of those conditions he moved to reconsider.

JUDGE REAGAN said he wished to state what occurred to him as an additional reason to those already urged by the delegate from Galveston for reconsidering the vote. A knowledge of free and popular government might be embodied in the laws of the future, but that was not sufficient for the support of the principles of such government. The basis and true support was in the knowledge which the people at large had of the principles of self government and popular liberty. Discussions of the nature of those brought out in a Constitutional Convention went to illustrate and to explain the doctrines of their system of government. Some of the features of the debates would, no doubt, go out in the current history of the day, but in addition there should be something reliable, to enable the courts to understand the provisions of the Constitution subject to misconception, and in order to do that it seemed to him that it would be well to preserve the debates of the Convention, so that they might thereafter be reached by the people, that their minds might be fully imbued with the principles discussed and embodied in the Constitution. They had an indication of their usefulness in the fact that most of the states that had held conventions had provided for the publication of their debates. They had assembled in Austin to frame a new Constitution, and on many questions that would arise they should be at a great loss for the want of a necessary library. If the Convention should make suitable provision for the publication of its debates, they might exchange with the public libraries of other states, which would place the members of any Constitutional Convention which might assemble in Texas in the future in a better condition for the prosecution of business than were the members of the convention then in session. With the exception of such volumes as were brought in by individual members, they had no access to the debates of other states, to explain and illustrate the great doctrines which formed the basis of their system of government. If expenditures were justified for any purpose other than the mere making of the Constitution, it was for that which furnished to the people of the whole country the reasons which influenced their action, and which suggested the various provisions of the Constitution, and would aid their interpretation of the Constitution when it was made. Taking the view that they ought to have the publication of the debates he would support the motion to reconsider.

MR. L. W. MOORE, of Fayette, said that whatever would contribute to the distribution of information concerning the deliberations of the Convention, the expense necessary to meet that demand should be cheerfully borne by the Convention. Retrenchment and reform were certainly the watchwords of their conduct, and no one rejoiced more than he did with reference to the care and deliberation with which they had proceeded thus far, and yet it occurred to him that of any sum of money which the State might invest, none would be so judiciously invested as that incurred to preserve the reasons which impelled gentlemen of the Convention to cast their votes on the principles submitted to them and their judgment. If any addition to the causes assigned were necessary, he apprehended that when it was known that the speeches delivered upon the main provisions of the Constitution were to be substantially preserved it would give due caution to the utterances that would be made, and would induce the members to be all the more careful in the preparation of their opinions. The object of the Convention was to do its work so it would redound to the credit, the honor, and the glory of the State, and to that end it was necessary to proceed with due care and judgment on all propositions submitted to it. Gentlemen would be incited to excellence by knowing that the fruits of their investigations would be preserved in some substantial form. He would be happy to vote for the proposition, and would consider it a great misfortune if it failed on the score of mistaken economy.

MR. WEAVER said there were two things they ought to steer clear of, that of extreme retrenchment on the one hand and extravagance on the other. They had already as a Convention refused to take newspapers to diffuse information. He had voted in the affirmative, and desired particularly to give his reasons for so doing. They were there to make a Constitution for a State which was an empire in extent larger than the whole of France. They had refused by vote to employ a stenographer to report their debates. He was not aware of the ordinary price of such labor, but did not deem the proposition an extravagant one. Upon a false principle of retrenchment and reform the reports in the press had been cut off and now, even as far as the debates were concerned, they had shut off from the people of the State publicity of their action. If it were the State of Rhode Island, where you could hear the Speaker's hammer from one side of the state to the other—and he meant no disrespect to little Rhody which was great in many things—it might be said that people could get all of their information from the capitol alone. But when he considered the fact that they were willing to vote themselves ice, stationery, postage stamps, and conveniences of that sort, and ignored the employment of a stenographic reporter to report their debates, it seemed that they wanted retrenchment to begin abroad and liberality to stay at home. To use a figure of old, attempting to ignore the press and the report of the debates, they were like the giants who threw mountains at the gods. That brilliant and peculiar historian, Carlisle, said that the first crucifier of God was afterward worshipped, and it seemed to him that they were similarly attempting to crucify public opinion in their acts in the Convention. The fact that the debates in the construction of the organic law of the land had been a guide to the judges of the country was a matter of judicial history known to the legal gentlemen of the Convention, and that alone was an important argument why they should employ a stenographer to report their work. He thought there was a stronger reason, and that was the one argued by the gentleman from Fayette, that it would be the means of furnishing the people of the State information of what they were doing, and why certain measures were adopted as the organic law by their delegates, who were but the agents and servants of the people. If the Constitution was to be the work of the delegates, and was to be reported to the people for their adoption, how were the people to understand what they were voting upon unless such information were disseminated before hand. He endorsed the wise remarks made the other day on the same subject by the gentleman from Titus, that the people ought to be informed from day to day and from week to week, and that liberty was less loved in proportion as the people were less informed. They ought to be informed on the great questions which were to come before the delegates of the Convention. The great expense of the Convention was thrown upon the taxpayers, but, if it failed for want of information, the responsibility could certainly not be ascribed to them, but to the Convention. In his district three of the counties had no newspapers, while two of them had only weeklies. Hence they had no opportunity to be informed, and would be in a state of darkness in regard to the Convention's proceedings. He feared that the state of things existed in a large degree from Cooke County to the Rio Grande, and thought it worthy of the people that they should be informed upon the subject. He was not afraid to meet his constituents on the subject of retrenchment and to tell them that he voted to subscribe for papers or voted to employ a stenographer to report their debates. The press was the great moulder of public opinion, the great incentive to freedom, and the recorder of deliberative bodies everywhere. It was the great educator of the American mind, and to strike at the press, however venal and capable of being subsidized some of it might be, was to strike at the very sun of intelligence. He was not afraid to say to his constituents that he had voted to employ a stenographer. He did not believe there was any such incredulity among them as to desire to remain in ignorance of what gentlemen were doing in their sovereign capacity, and hence he supported the motion to reconsider.

MR. STOCKDALE said there were numerous propositions with reference to changes in the Constitution which were new and original, and which had not been discussed very generally before the people. If they adopted such provisions it would be exceedingly wise to let the people know why they had done so, and those reasons would be best found in the debates pro and con in the Convention on the subject. For that reason he favored very much the appointment of a stenographer to report their debates, that the people might know their reasons for every action. He quoted the Honorable John Hancock as to the competency of the person proposed as the reporter, and added his own testimony in his favor. He was satisfied that in Mr. Gibbons they would have a good reporter, and that the debates of the Convention would be preserved just about as they occurred. He trusted that the Convention would employ one and that they would give to the country the reasons actuating them in the adoption of the provisions of the new Constitution.

The motion to reconsider prevailed.

THE PRESIDENT said the question before the Convention was the adoption of the resolution reported by the committee.

MR. JOHN S. MILLS, of Grimes, offered the following amendment: "That said stenographer shall report said debates in a round, legible hand, ready for the printer, without additional charge."

MR. T. G. ALLISON, of Panola, moved to lay over the whole matter until the next day, and make it the special order for that day.

Mr. Mills' amendment was then adopted, as was also the resolution as amended.

# NINTH DAY

WEDNESDAY, SEPTEMBER 15, 1875[14]

MR. E. W. BRADY, of Grimes, from the select committee, to whom was referred the question of filling the vacancy occasioned by the resignation of Mr. Goddin, of the Fifteenth District, reported as follows:

*Resolved,* That a vacancy having occurred in the representation of the Fifteenth Senatorial District in this Convention, by the resignation of the Hon. M. H. Goddin, of Walker County, his excellency, the Governor, be and is hereby requested and authorized to order an election, to be held in said district, to fill the vacancy, on Saturday, the 25th day of September, 1875.

MR. MCCORMICK offered the following substitute:

"Whereas, It appearing to the satisfaction of this Convention that at the election held for delegates thereto, in the Fifteenth District, one M. H. Goddin, of Walker County, received the certificate of election, and it appearing to the satisfaction of the members hereof, that said M. H. Goddin is, and was at the time he received the certificate of election *non compus mentis,* and therefore ineligible to a seat in this convention;

"And it further appearing that at the election for delegates in said district, D. C. Dickson received the next highest number of votes; and that said Dickson is a pure, good man, and the true representative of the good people of the said district;

"And further, that the said Goddin having, in a fit of drunkenness and passion, resigned his seat in this Convention; therefore be it

"*Resolved,* That in the opinion of this Convention, the said D. C. Dickson is the true representative of the good people of the Fifteenth Senatorial District;

"*Resolved* further, that D. C. Dickson, upon taking the oath prescribed by the Convention, is admitted to a seat in the same."

MR. MCCORMICK moved to refer the report of the select committee and his substitute to a committee of five.

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[14] The proceedings for this day were taken from the *State Gazette* (Austin), September 16, 1875.

MR. J. R. FLEMING, of Comanche, opposed the motion. It would involve a recount of the votes in that district, and would waste time uselessly. There was no claimant to the seat that he was aware of, and that the party resigning had been elected by a majority of votes was not questioned. It might as well be asked that the Convention sit as a court of lunacy, as to inquire whether the delegate referred to was disqualified for the reasons given. As to the report of the committee, its members had no doubt in their own minds, and after consultation with other members of the body, that the Convention had the right to fill any vacancy in its ranks, but as the machinery for calling an election was not in its control, the committee interviewed the Governor to ascertain if he would act upon a call of the Convention. The constituency whose delegate had resigned was entitled to representation, and if the report were acted upon promptly they would soon obtain it.

MR. J. B. MURPHY, of Nueces, ridiculed the idea of the Convention determining which of its members was or was not *compos mentis.* He suggested that it would be well to refer to a lunatic asylum, for he did not think the Convention was well qualified to sit on a question of lunacy.

The motion to refer to a select committee of five, and the substitute were lost.

MR. CRAWFORD was opposed to establishing a precedent, as there was no telling to what length it would go. He moved the postponement of further consideration of the question until the next day, the question to be taken up then after the dispatch of the regular business.

MR. BROWN alluded to several precedents. Among others he mentioned that Sam Houston resigned his seat in the Convention of 1845, and that Dr. Stewart, late member of the Fourteenth Legislature, was elected to fill his place. A similar precedent was established in the Convention of 1861 when Mr. Jones' place was filled by election.

MR. JOHNSON, of Franklin, thought the last speaker was in error with regard to Sam Houston, for when a motion was made to vacate his seat it was voted down.

MR. MCCORMICK hoped the motion to postpone would carry. He saw no reason why an election should be ordered. Some carpetbagger would go down there and be elected, and he could see no good to the State or county from such election. There were two delegates present, able and willing to represent that district, and it would not suffer for want of representation.

MR. SANSOM said the Fifteenth District was entitled to representation, and it was simply a question of whether the Governor should be requested to call an election. It was no part of the business of the Convention to consider the manner of man who might be elected. If he reflected or did not reflect the sentiments of his constituency was not a question for them to determine either, but simply a question of election by the district entitled to representation.

MR. DOHONEY thought the Fifteenth District was entitled to its full representation. The question in his mind was whether the Convention had the power to order an election. It was clear to his mind that it could not issue a writ of election. It was proposed that the Governor issue his proclamation, he having only the powers given him by law, which were such, however, as had called that Convention. The time had passed, however, when he could issue such proclamation, and the Convention had not proposed to clothe him with any new powers. There were precedents, on the other side, to prove that the Convention had no power to fill vacancies. He was in favor of postponement.

JUDGE REAGAN thought it was the duty of the Convention to make provision to fill vacancies, and as it had power to do it he should oppose postponement and favor action at once on the subject. He knew it was a question among lawyers whether a Constitutional Convention had the power to fill vacancies. Examined by lawyers as lawyers, their decision might be that the Convention had no such power. He quoted Mr. Jamison as his authority for such an opinion. He, Reagan, thought they were to examine, not as lawyers, but as it affected the rights of the people. The right of the people to representation in all legislative bodies was held sacred in all countries. Their right to representation in the formation of a Constitution could be held no less sacred. Suppose more than one district were to lose representation by the vacation of seats of delegates. They could see where this matter might lead, whatever might be determined as the rule of law by lawyers. He doubted if any such conclusion would be sustained by practice and experience. In 1845 Sam Houston had resigned his seat from that same district, and Dr. Stewart was elected. In 1861 he, Reagan, resigned, and Colonel Word was elected to his place. He was satisfied that some six such vacancies had been filled by election. In the North Carolina Convention a distinguished member had resigned his seat and provision had been made to fill it. Looking at it as a Convention, and not as a legal question, he thought it their duty to make provision to fill vacancies. It could be done, he thought, by requesting the Governor to issue his proclamation calling an election, or by directing the President of the Convention to do it. He did not think that in 1861 the Governor was called upon, as he was not in sympathy with the Convention, and he took it for granted that the other mode was used to fill the vacancies. As Mr. Sansom had said, it was not their place to determine the views of the men to be sent there, but the Fifteenth District was entitled to representation by such men as it might elect. He thought the question before the Convention should be disposed of at once.

MR. W. B. WRIGHT, of Lamar, thought the question was vital, as it affected the power of the Convention *in limine*, in its deliberations. Desiring to vote intelligently he favored postponement. Mr. Jamison, he was aware, was much confused as to the powers and organism of a Convention existing simultaneously with a Government. The Convention was a body clothed with power from the people, and had been called to power by a popular vote. That Convention represented its own vitality. It was unquestionably within the power of the Convention to presume that it was inviolate, and that a part of that vitality was to order its presiding officer to fill vacancies. There were few who would not admit that the Convention had the power of self preservation. It seemed, then, unquestionable that it had the power to order an election and not merely to request the Governor to do it. A request to the Governor was simply State diplomacy. He had nothing to do with the Convention so far as were regarded its powers and rights. He regarded that as one of the inevitable powers inhering in the Convention. Hence he favored postponement in order to examine into the question, not merely as lawyers, but as honest men. He wanted to get an enlightened consideration of the subject and then vote upon it.

MR. WEAVER said the question of sovereignty had cost millions in blood and treasure. He would be the last man to ignore the sovereignty of the Convention. Its limit could not be fixed. It was supreme as far as the people could make it, and overrode all law and all organic law. But still they had met, recognizing the Constitution under which they were then living. It was law until they adopted a new constitution and it had been ratified at the ballot box. The people of the Fifteenth Senatorial District were entitled to representation, whether the delegate they elected was Radical, Conservative, or Democrat, and the only question was how was the vacancy to be filled. The question was one of constitutional and legal right. Its reference to the Governor was simply one of courtesy, to apprise him of the will of the Convention and to let him exercise the power of issuing a proclamation to fill the vacancy.

MR. FLOURNOY said that too much controversy had taken place on a misapprehension of the purposes of the report. He had stated that the committee had no doubt of the power of the Convention as a parliamentary body to fill vacancies in its own ranks, but appreciated the fact that the people of the State wanted the whole of Texas to be represented in the Convention. But the machinery of election was not yet provided by the Convention; therefore, they called upon the Governor to act for them through the machinery and officials of the State Government. He had consented to issue his proclamation if called upon. When the Governor refused to use the machinery at his command for such purpose to carry out the will of the people, it would be time enough for delegates to consider their rights as a sovereign body. They were having a controversy on a state of things which did not exist. It had been said that they should not "request" but "order" the Governor to do so. His idea was that a request was a polite way of ordering the will of the Convention to be carried into effect. If it was the will of the Convention to have the vacancy filled so that the district might be represented and on an equality with other districts, it was useless to hold a controversy over the matter, because no one had disputed their power to fill it, and the whole machinery of the law had been tendered the Convention to carry out its will.

MR. CRAWFORD did not question the last speaker's statement that there was nothing in the Constitution of 1869 authorizing the Government to fill vacancies except in offices under the Government. The Governor had no more power to order an election to fill the vacancy than did any other citizen, for he derived his power from the provisions of the law of the State, and in the absence of that had none. If the Convention claimed the right to fill vacancies it ought also to have the symmetry and uniformity attaching to such power, to appoint its agents and clothe them with proper authority, so as to give respectability to it and entitle their acts to obedience.

MR. D. A. NUNN, of Houston, said it had suggested itself to him that it was not the want of power in the Convention nor yet the mode in which they were seeking to exercise it, for he conceded both. But he thought the resolution did not go far enough. It was not pretended that they had power to change the election law. The Convention recognized the fact that they were elected under a joint resolution of both Houses, but now it was proposed to order the Governor to call an election within ten days. There was no election law that recognized a proceeding of that sort. Suppose the Governor assented to the proposition. The only thing to guide his judgment was that a certain day had been fixed for the election. There was no authority in the election law authorizing him to issue his proclamation calling the election within ten days. Did they propose to disregard the election law? His objection to the resolution was that it was not complete in itself. Authority and power must be given by the Convention to the Governor to call said election, otherwise he could not see how the Governor was to act upon their resolution.

MR. MARTIN, of Navarro, moved as an amendment to Mr. Crawford's amendment: "That said election be ordered by the President of this Convention, and said election be held and governed by the existing laws of this State." He made the motion, he said, simply to test the powers of the Convention. He had no objection to an election, but he did object to giving any number of men the opportunity of shaking the dust from their shoes, and of expressing their disgust with the Convention by retiring from it. Nor did he object to postponement or reference to a special committee.

MR. DOHONEY moved to strike out the word "request" and insert the word "authorize" in the resolution.

MR. MILLS asked the gentleman from Navarro to withdraw his amendment, at is would be impossible to obtain in time, to be of service, the general returns of an election held under the State laws existing. The Convention had done away with the constitutional oath, and if they had the right to order an election they could do it in two days or ten weeks, just as the Convention in North Carolina had done. If the Convention in North Carolina had the right to call an election in ten days, then the Texas Convention could do the same thing, for the Constitution of North Carolina was very much like that of Texas. The people of the Fifteenth Senatorial District asked to be represented, not in part but fully, on that floor, and he hoped they would elect a better man and be represented more competently than they had been at the start. He wished to strike out of Mr. Martin's resolution "in conformity with existing laws" so as to read, "that the said election be ordered by the President of this Convention."

MR. MARTIN said he would accept the amendment, but the amendment, as amended, was lost by a vote of 32 to 41.

The question recurring on Mr. Dohoney's amendment, Mr. Johnson, of Franklin, moved to amend by striking out the word "requested" in the resolution and inserting the word "instructed."

MR. SANSOM moved to lay the amendment on the table, but his motion was lost by a vote of 29 yeas to 49 nays.

MR. WEST explained that "requested" meant about the same as "instructed" or "ordered." The legal effect was the same, and the first expression was the most courteous of the three.

MR. JOHNSON withdrew his amendment.

MR. DOHONEY'S amendment was accepted and the resolution of the committee was adopted.

## TENTH DAY

### THURSDAY, SEPTEMBER 16, 1875[15]

MR. MILLS moved to take up the unfinished business of the Convention.

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[15] The proceedings for this day were taken from the *State Gazette* (Austin), September 17, 1875.

**General L. S. Ross**, of McLennan, moved to reconsider the resolution employing a stenographer.

**Mr. Wright** rose to a question of order. He said the Convention had just refused to employ a stenographer. Mr. Flournoy had moved to reconsider the resolution of refusal, and under that consideration the stenographer was employed. The motion today was to reconsider that consideration. If such a rule were held valid they might move to reconsider and reconsider without end. He referred to Rule 35 of the Rules of the Convention in support of his position.

**Mr. Miils** thought that if the Journals showed that the House had acted on the motion to reconsider then Mr. Wright's point of order was well taken, otherwise not.

**Mr. McCormick** spoke against the employment of a stenographer. He thought it would cost thousands of dollars. He hoped no attempt would be made to force the opposition to appeal from the Chair.

**Mr. Stockdale** favored strict adherence to the rules of the Convention. It was assumed that a majority of the Convention desired to get rid of the contract; it was an assumption against the record. They had no vote on the question and were then actually spending as much time in discussing the matter as the stenographer's services would cost the Convention. The rule was that only one consideration could be had on the same question. It might be urged that an amendment had been made to the original resolution by Mr. Mills, but it simply indicated the duty of the stenographer and was not material to the resolution.

**Mr. West** denied that the employment of a stenographer was being forced upon the Convention. It was a question of little importance, and had been acted upon with more deliberation than any act before that body. He appealed to the delegates to carry out the Rules of Order so that business might be more easily attended to. The amendment of Mr. Mills did not alter the original resolution, and the authorities—Cushing on "Legislative Assemblies," among the rest—said that if the amendment was unimportant a second reconsideration of the original question could not be held.

**Judge W. P. Ballinger**, of Galveston, was of the opinion that where a motion had been put, voted on, and reconsidered, it was not in order to repeat the motion; but it was different where an amendment had been adopted. He did not understand that there was any limitation to that rule. He cited instances of voluminous debate of an expensive character in a discussion of the merits of the question as a reason why such expense should be incurred, but did not think they would apply in the case under discussion.

MR. DEMORSE defended the action of the Committee on Printing in a pertinent speech. He had advocated the printing of the debates in a condensed form in the newspapers, and had urged that the papers containing the debates should be placed on the desks of members. His idea was to diffuse information among the people, although he thought that in book form they would be of service only to the legal profession. He submitted an estimate showing that the salary of the stenographic reporter and the publication of the reports in newspaper and volume form would not total together more than $4,500.

JUDGE REAGAN said that, while he was not in sympathy with those who desired to reconsider, he did not think the question would be a reconsideration of any vote theretofore taken. The question yesterday had been a vote to reconsider the vote adopting the resolution appointing the reporter. Hence, he thought the motion to reconsider was in order. He was anxious to see the debates published in proper form, but not at the expense of the rules of the body.

MR. WEST maintained that the motion to reconsider was not in order, because Mr. Mills' amendment had been engrafted on the original resolution since its first reconsideration. He referred to Cushing and Barclay for authority to support his view.

MR. RUSSELL, of Harrison, supported reconsideration with a short speech.

MR. RUSSELL, of Wood, dissented from the views of Mr. West that Mr. Mills' motion did not change the resolution. He thought that it did, as it specified how the reporter's work was to be done. He opposed the appointment of a reporter on the ground of expense.

MR. J. W. BARNETT, of Parker, said Mr. West's argument referred exclusively to the practice in the British Parliament and in Congress, while the Convention was acting under laws of its own creation.

MR. JACOB WAELDER, of Bexar, argued that if there was no doubt in the mind of the Speaker as to the point of order being well taken, it should be given to the Convention.

MR. STOCKDALE appealed for caution in the decision of the Chair, as it was a question affecting the future government of the Convention. It was not a question whether the motion to reconsider was on a resolution decided either in affirmative or negative, but whether or not it was a reconsideration of the same subject. It had been once considered, and no further consideration could be had, except under suspension of the rule. They had analogous cases in legislative bodies where questions were passed and reported from one House to the other. In such cases a message had been sent to recover possession of the bill or resolution. In this case they had accepted a proposition to make a contract, it had passed from the possession of the Convention, and they could not recover it.

MR. MCLEAN said it was not clear to him whether the President had decided the question of order. If it was a question of order, what was the decision of the Chair.

THE PRESIDENT stated that it was allowable under parliamentary law to permit the expression of views pending a decision by the Chair, though not strictly in order.

MR. MILLS said he could not admit the correctness of the analogy suggested by Mr. Stockdale. There was but one House in this case, and it was the Convention.

MR. FORD maintained that Mr. Mills' amendment was unimportant and did not affect the material part of the resolution. At previous conventions reporters had been appointed, and no such instructions had been given. The report would not be a report unless transcribed into common writing.

THE PRESIDENT said as he understood the point of order made by Mr. Wright, of Lamar, it was on these grounds. The report of the committee contained a resolution to employ Mr. Gibbons. The amendment of Mr. Mills described how the work should be performed. He read Rule 35, as follows:

> "After a question shall have been decided in the affirmative or negative, any member who voted with the majority, may on the day on which the vote was taken, or within the next succeeding of actual session, move the reconsideration thereof, unless the resolution,

ordinance, message, report, amendment, or motion, upon which the vote was taken, shall have passed out of the possession of the convention."

Cushing, edition of 1866, had said that if when a motion to reconsider either an affirmative or a negative proposition had prevailed no other motion to reconsider was admissable, but if it had been altered by amendment so as to be no longer the same it might be reconsidered. Barclay, three years later, said: "When a motion to reconsider has been once put and decided, it is not in order to repeat the motion, but it is otherwise where an amendment has been made." It was not declared that the amendment must be material or important. The Chair felt bound by the latest authority. Without doubt the amendment was a substantial and material change, and if he had not felt bound by Cushing he should do so by Barclay, a still later authority. Therefore, he held that the amendment, in the most liberal construction, was a material amendment. He felt convinced that were this not so that the opinion of the gentleman from Bexar, that if any doubt existed it should be given in favor of the State, should have weight. He decided that the point of order was not well taken.

A motion to refer to the Committee on Printing was declared out of order.

MR. WEST moved to postpone until the next day and to make it the special order.

THE PRESIDENT declared Mr. West's motion out of order except the part making it the special order.

MR. WEST'S motion was lost by a vote of 14 to 68.

The motion to reconsider then carried by 60 yeas to 23 nays.

THE PRESIDENT said the question then before the Convention was the resolution reported by the special committee to employ a stenographic reporter.

MR. FLOURNOY offered the following as a substitute for the resolution:

*Resolved*, That the stenographic reporter be employed to report only the debates on the proposed Constitution, or some part thereof; and that the Committee on Printing be instructed to contract with him, at reasonable rates, and also for the publication of same in some daily newspaper, and for the furnishing of fifteen copies of such newspaper to each member of the Convention.

MR. RUSSELL, of Wood, moved to indefinitely postpone the whole subject matter.

MR. DARNELL said he thought it was unfair to those who might wish to give their constituents some information with regard to the action of the Convention to muzzle the Convention in that way. He hoped the gentleman would witdraw his motion.

MR. RUSSELL withdrew his motion.

MR. DARNELL said he had come to Austin determined to do all in his power to bring retrenchment and reform into the Government and into the Convention. He had also hoped to have an opportunity of giving to his constituents the action of the Convention while it was in progress. Was it the intention of the Convention, not only to muzzle the press, but also to muzzle their own action and to deprive their constituents of a knowledge of their proceedings? He asked the privilege of sending home to his constituents an account of his action and that of every member of the Convention. How were they to know what members were doing? Did they not wish to understand the situation always? He knew it was the wish of his constituents that they should be informed of the work of the Convention. The question of the adoption of the Constitution would soon be up before them, and they would be in the dark regarding members' action, and would not have time to ascertain it. He had hoped the Convention would extend to the people of Texas an account of the action of the body. He was prepared to vote for any object which would accomplish that end. He had been in favor of taking the daily papers, but delegates had objected and said that the people could not read and understand them. He thought they could understand whether they voted yea or nay on any question. He could have sent ten copies of daily papers if he could have obtained no more, and his people could have understood from them the action of the Convention on the various questions. He was deprived of that privilege, and now he appealed to them, for God's sake, to send them some information. If he did so it would have to be at his own expense, and his constituents did not expect that sacrifice of him. He asked the Convention if their constituents should be denied in the matter. If it could be done by a stenographer reporting the debates in the papers, they would have the opportunity of sending out the results of the action of the Convention, and the people would know that they were doing something. But if the Convention intended to muzzle the press, and keep back a knowledge of their doings, he was not one of those who would consent to it. He was in favor of giving information to the people and giving it in the best manner possible.

MR. F. J. LYNCH, of DeWitt, spoke against the resolution. Considering the fact that many people could scarcely support themselves he was opposed to it on the ground of expense. The publication of the debates would cost from $15,000 to $25,000. It might be all very well for the legal profession and for men who made speeches, but the people had to pay for the music while the frolic lasted.

MR. McCORMICK estimated that the publication of the debates would cost $12,150, and he was opposed to it on the ground of expense.

MR. D. A. NUNN, of Houston, replied to the arguments of the opposition and showed the necessity for the preservation of the debates, not in the interest of the legal profession but in consideration of the people whose advocates they were in the courts. There were important propositions affecting questions of suffrage, the public schools, judiciary, and title. He deprecated this agitation by perpetual reconsideration, for they would not be able to determine whether or not anything was settled until they adjourned finally. He proposed to amend the substitute as follows:

"The stenographer shall continue in the employ of the Convention under the contract made heretofore, until the further action of this Convention."

The amendment was withdrawn.

MR. BROWN said he was in favor of the publications of the daily Journals.

MR. FLOURNOY submitted an estimate, showing that the cost of supplying each member with fifteen newspapers containing the debates, for sixty days, and the salary of a stenographer for the same period, would amount to only $4,650.

MR. CRAWFORD offered the following amendment, which was accepted:

"That the detail of said contract be reduced to writing by the committee, with estimate of the cost of session of forty-five days, and referred to this body for approval or rejection."

On motion of Mr. Scott the main question was ordered, which was the adoption or rejection of Mr. Flournoy's resolution. The substitute was lost by a vote of 42 yeas and 43 nays.

MR. CRAWFORD moved to adjourn until the next morning at 9 o'clock, but it was lost by a vote of 23 yeas to 59 nays.

The yeas and nays were then called for upon the adoption or rejection of the original resolution. It was lost by a vote of 31 yeas to 53 nays.[16]

## ELEVENTH DAY

### FRIDAY, SEPTEMBER 17, 1875[17]

The greater part of the eleventh day of the Convention was taken up with the introduction of resolutions which were referred to appropriate committees.

MR. FORD reported for the Committee on State Affairs on the subject of using the Constitution of 1845 as a basis for the framing of the new Constitution. He asked that the several portions be given to the various committees for consideration, in order that the various committees should be guided as closely as practicable by the older Constitution.

MR. W. N. RAMEY, of Panola, favored the report.[18]

He said:

"Mr. President, in the printed report of the Committee on State Affairs on my resolution to make the Constitution of 1845 the basis of our action on the new Constitution, I find a mistake, one not very material, however, but which may operate against the passage of the resolution. The printed report reads that 'The Constitution of 1845 shall be made the basis of the new Constitution' while the original which I hold in my hands reads 'the Constitution of 1845 shall be made the basis of our action in the formation of the new Constitution.' I will state with respect to the honored Chairman of said committee, Colonel Ford, that I am satisfied that said discrepancy is an oversight, and I merely refer to it for some one may oppose the resolution in consequence of the change.

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[16] The press condemned emphatically the failures of the Convention to provide for publication of the debates. The *State Gazette* of September 16, remarked that time enough had already been consumed in discussing the employment of a stenographer to pay for his services during the entire session. The same paper condemned Judge Reagan for "leading the crusade" against a free and enlightened Democratic press "on the miserable pretext that the Democratic press has no use for organs. . . . "

[17] The proceedings for this day were taken from the *State Gazette* (Austin), September 18, 1875.

[18] His remarks are printed in full in the *State Gazette* (Austin), of November 23, 1875.

"The question naturally arises as to what we aim to accomplish by the adoption of this resolution. I answer a great deal. First—we will thereby expedite the work of the Convention, and by it introduce the great principle of economy we have promised the people, and which should characterize our action. Every one here knows very well that the great and leading principles of our American Constitutions *are in substance almost the same*, and in none of them are these settled principles better expressed than in the Constitution of 1845. We certainly don't expect to change the fundamental principles of Government established by our fathers. The Constitution of 1836 was made by able men, many of them from the leading states of the Union. They compiled their Constitution from that of the United States, and from the leading State Constitutions. After nine years of experience under its provisions, the Convention of 1845, composed of our ablest and most patriotic men, amended and improved the old Constitution of 1836, and made it applicable to a state instead of a national government. After a few years experience with the Constitution of 1845, it was amended by an able Legislature, making it, I think, the best Constitution I ever saw, and which has been so pronounced by able men both in the State and out of it. Now, I propose to take up the said Constitution of 1845, and in committee of the whole consider it, and then adopt it in the main, and we do it in two or three weeks at the furtherest. By that time the different committees will have reported such amendments as are necessary to perfect said document, and make it meet the demands of the changed conditions since ante-bellum days. We can adopt such of the amendments as we deem proper, and thus by this plan in six or eight weeks at the outside our labors will be ended. If we do not do this we will flounder through an ocean of speculation and invention, and may be here three months or more, and may not produce as good a Constitution as our fathers left us. *We do not propose by this resolution to adopt the Constitution of 1845 at one fell swoop, but to make it the basis of our action, and thereby expedite our labors.*

"We also proposed by this resolution to guard against a spirit of innovation and change in the great organic principles of our Government. Human nature is the same in all ages and centuries, and I am satisfied that all sorts of changes and new-fangled theories will be proposed for our adoption—many of them such as have not been canvassed before the people. Few of these may be adopted, but they, in their consideration and disposition, will consume our time and retard our work. Many have doubtless come here with their own pet theories, and will endeavor to engraft them on our Constitution. This resolution will, in a great measure, prevent such at least as to the great body of our work. The nearer we stick to the land marks, the better for our labors, and the more changes we make in the cardinal principles settled by our fathers, that much more will we jeopardize the sanction and adoption of our work by our constituents.

"By this resolution we also propose to answer the demands of the people. From my district, which is the oldest part of the State, and from every section of the broad land I have heard the cry 'give us the Constitution of 1845.' This has been expressed by meetings of the people in not only a political, but in almost every other capacity, by the leading papers, citizens, etc. This cry has been almost universal from the Sabine to the Rio Grande and from Red River to the Gulf, and as true representatives we should heed it. We are only the agents of the people, and should do as we are told to do and not support any measure without knowing that it is in accord with the desires of those whom we represent. And why do the people call for the old Constitution? Because its provisions are simple, plain, and non-partisan in character, and under it they lived cheaply, happily, and contentedly.

"By its provisions they were freed from the extortioner, the usurper, the unreasonable demands of the tax-gatherer, the oppression of the military, etc. These and many other reasons are why the people 'sigh for a return to the flesh pots of Egypt.'

"Again, patriotism demands that we should adopt this resolution and adhere to it. Texas has a history that is both national and peculiar, and of which we should all be proud. This Constitution began with her national history as the Constitution of 1836. Then the same instrument, amended and adopted, began with our history as a State in the Union of 1845, and continued until the late national war. It entered mainly into the Constitution of 1861, formed at least two-thirds of that of 1866, and entered largely into that of 1869, in fact, was the only valuable part of the latter. Let us reunite the broken chain and extend it. If the great organic principles in our favorite Constitution are good and generally desired, why supplant them with anything else? Why ransack creation for what we have ourselves, and in a better condition than can be found elsewhere?

"History teaches us that when nations depart *radically* from their own peculiar laws and institutions, that that is the beginning of their downfall. When the children of Israel obeyed their own laws and lived as their fathers had instructed them, they were happy, prosperous, and contented. But when they ran after 'strange gods,' and desired to be as the surrounding nations were, they began to decline, and finally lived as a nation only in history. While Greece and Rome lived frugally under their own laws and had their own national customs and institutions, encouraged agriculture and the peaceful arts, they were the model nations of the world. But when they followed the fortunes of Alexander and the Caesars, respectively, introduced the luxuries of the world and became cosmopolitan in character, they declined and now live only as monuments of the past.

"Let us adhere to the landmarks of our fathers, as settled by our most able and patriotic men, and rendered sacred by long and continued use, and train our children to love and respect our own peculiar institutions, laws, and customs. Let us use the *old ship*, compass, and charts left us by our ancestors, in our voyage, making only the necessary repairs and additions, and such as are demanded by the discoveries of other experienced seamen since their day, instead of seeking some great and finely rigged steamer that is untried, and may owe its importance only to its fine and stylish appearance.

"In answer to my friend from Colorado, Mr. McCormick, and others, I will say that this resolution entails no expense, for there are several hundred copies of the statutes of Oldham and White in the archives of the State Government, which are serviceable only as food for worms. They contain the Constitution of 1845, and every committee and individual member can be supplied with a copy without any additional cost whatever."

MR. DEMORSE said that, while everyone admitted the wisdom of the principles of the Constitution of 1845, they were sent, not to reënact that or any other instrument, but to make a Constitution according to their best lights on the subject. He moved the indefinite postponement of the report, which was carried.

## TWELFTH DAY

### SATURDAY, SEPTEMBER 18, 1875[19]

MR. FORD, for the Committee on State Affairs, reported favorably on authorizing Captain Voigt to contract for the repair of the Capitol Building at a cost not to exceed $75.

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[19] The proceedings for this day were taken from the *State Gazette* (Austin), September 19, 1875.

MR. MARTIN, of Navarro, thought the Convention had no authority to appropriate money for such a purpose, and moved the indefinite postponement of the resolution.

MR. FORD contended that it was public property, and that the Convention had the right to take care of it.

MR. STOCKDALE stated that there was a law against any officials paying for anything out of public funds for which no appropriation had been made.

The yeas and nays were called for on the question, and indefinite postponement was refused by a vote of 39 to 40.

The resolution of the committee was then adopted by a vote of 43 to 40.

MR. COOK, from the Committee on Printing, reported adversely to allowing delegates from frontier counties thirty papers each for distribution among their constituents.

The same committee reported favorably on allowing each delegate $10 worth of stamps for the session.

MR. MCCORMICK said he thought the Convention was carrying the matter a little too far. He subscribed for thirteen papers and paid for them himself, and he thought the least the Convention could do was pay the postage on them. The implication seemed to be that some members had taken too many postage stamps. The thing was becoming ridiculous. He was as much in favor of retrenchment and reform as anyone, but when they refused to go to the expense of putting in a pane of glass or paying for a postage stamp for a delegate to send a letter to his wife, he thought it was going too far.

MR. NUNN moved, as an amendment, that $10 be stricken out of the resolution, and $5 inserted. He submitted that, as far as he was able to know, they had no papers containing published reports of their proceedings, and it was, therefore, a work of supererogation to provide the means of distributing papers. There were some expenses it would be reasonable to allow, and he thought that $5 would be adequate to meet those expenses. The Convention had refused to take papers with a stenographic report or otherwise, and he could see no reason for incurring additional expense.

An amendment was offered to strike out $5 and insert none. This was accepted by Mr. Nunn.

**MR. McCORMICK** moved to postpone the resolution indefinitely. The motion was lost by a vote 25 yeas to 47 nays.

**THE PRESIDENT** said the effect of Mr. Nunn's amendment would be to allow stationery without limit. Mr. Nunn withdrew his amendment.

**JUDGE BALLINGER** moved as a substitute to the original motion, "that the Sergeant-at-Arms be instructed to furnish stationery, postage stamps, and wrappers to members, and that they report the amount used by each member, the same to be published in the proceedings of the Convention." Adopted.

The resolution, as amended, was then adopted by a vote of 67 yeas to 16 nays.

**GENERAL J. W. WHITFIELD**, of Lavaca, moved that the Committee on Printing be authorized to contract with some paper published in the City of Austin for the publication of the daily Journals, and that each delegate be furnished with five copies of same.

**MR. L. W. MOORE**, of Fayette, thought the Convention had settled all matters of that sort and could not entertain them further.

**GENERAL WHITFIELD** explained that it was a new question entirely.

**MR. MARTIN**, of Navarro, moved to strike out "five" and insert "one."

**MR. McCORMICK** moved to strike out "one" and insert "one for every three members." His amendment was lost.

Mr. Martin's amendment also was lost, and the original resolution was adopted.

## THIRTEENTH DAY

### MONDAY, SEPTEMBER 20, 1875[20]

**MR. J. L. HENRY**, of Smith, from the Committee on Legislative Department, submitted a substitute for the sections referred to them, the main features of which follow:

The substitute favored the election of thirty members to the Senate, and of ninety to the House until the first apportionment, when the Senate might be increased to thirty-three members and the House to 100, the successors to the former to be chosen every four years, half retiring at the expiration of two years, the members of the lower branch of the Legislature to be elected every two years. The substitute recommended biennial sessions, unless called together especially by the Governor. No person was to be eligible to any office, legislative, executive, or judicial, unless he was a regularly qualified elector and had been for two years a citizen of Texas. The Legislature was made the judge of the election and qualifications of its own members. The Senate was to elect its own presiding officer, and the House its Speaker. The Journal proceedings of each House were required to be regularly kept and published. The Governor was required to issue a writ of election within two days after the occurrence of a vacancy. The mileage allowed members was to be one day for every twenty miles traveled. Each House might imprison any party—not a member—for not more than forty-eight hours for contempt. No member should be eligible during the legislative term of which he was a member, for any office created by said Legislature. The compensation of members was fixed at $5 for each day of the first sixty days, and $2 a day for the balance of the session, except that on the first session of the Legislature after the adoption of the Constitution members would be allowed $5 a day for ninety days. Four-fifths of either House could suspend the rule requiring the reading of bills on three several days, but the yeas and nays on each suspension were to be taken and recorded. The Legislature was given power to pass laws against lotteries and similar enterprises. The Legislature was given authority to raise revenue only for the economical administration of the Government, the payment of the public debt, the creation of a sinking fund not to exceed 2 per cent, the support of the public schools and other purposes specified; it should not have power to pledge the credit of the State to any railroad, municipal, or other corporation, and should not become a stockholder, but might grant aid in any public calamity. The substitute vested power in the Governor to call a constitutional convention on a vote of three-fourths of both Houses; and the Legislature was to have power to propose constitutional amendments on a two-thirds vote of both Houses.

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[20] The proceedings for this day were taken from the *State Gazette* (Austin), September 21, 1875.

MR. RUSSELL, of Harrison, said that, while he agreed in the main with the majority report, he should submit a minority report.

MR. BROWN moved to print 400 copies of the report.

**Mr. H. W. Wade**, of Hunt, thought 200 copies would be enough.

**Mr. Brown** argued that 400 copies would leave them an overplus number to send to their constituents. His motion was carried.

**Mr. Cook**, from the Committee on Printing, reported that they had, in accordance with a resolution from the Convention, contracted for the publication of the daily Journal, and had awarded the contract to J. D. Logan for five copies to be supplied to each member, at a total cost of $11.25 a day.

On motion of Mr. Mills the report was adopted.

**Mr. Mills** presented a resolution providing that the Constitutional Convention, having reduced their salaries three-eighths of the original amount paid to legislators, and having promised their constituents the most rigid retrenchment, go on record as believing that the salaries of all State officers should be similarly reduced. The resolution would have advised the reduction of the Governor's salary from $5,000 to $3,125, that of Supreme Court judges from $4,500 to $2,812.50, and others in like proportion.

**Mr. Flournoy** moved to refer the resolution to the Committee on Agriculture and Stock-raising.

**Mr. Martin**, of Navarro, moved as a substitute that it be referred to the Committee on Executive Department, and his motion carried.

## FOURTEENTH DAY

### TUESDAY, SEPTEMBER 21, 1875[21]

### *Postponement of Election*

Upon the motion of Mr. Brown, Mr. West read the majority report of the special committee on the resolution to postpone the election of December, 1875, to a future date.[22] The report is as follows:

"HON. E. B. PICKETT, *Chairman of the Convention:*

"The undersigned, constituting a majority of the select committee to whom was referred a resolution, and also a proposed ordinance providing for the postponement of the election for members of the Legislature and other officers, to be held according to the existing laws of the State, on the first Tuesday of December, 1875, beg leave to make the following report:

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[21] The proceedings for this day were taken from the *State Gazette* (Austin), September 22, 1875.

[22] The majority and minority reports are printed in full because of the great interest created in the Convention and among the people of the State, also because of the importance of the constitutional problems involved.

"They have carefully considered the subject and have availed themselves of all sources of information that were accessible to them.

"In the matter under consideration, they have arrived at the conclusion that this Convention has the power, and that it is their duty to the people of the State to postpone said election, and the assembling of the Legislature in January next.

"That most of the changes recommended will be adopted by this body and accepted by the people of the State, there is no doubt.

"While then this body, in the plain discharge of its duty, is in the act of thoroughly reforming and reorganizing this branch of the Government, it seems to the majority of the committee, not only to be proper, but to constitute an important part of the duty enjoined on them by their election, to postpone for the present, the meeting of the Legislature, when its assembling in January next could have no other effect than the creating of confusion, conflict, embarrassment, and add greatly to the expense of the people of the State, without any corresponding benefit to be derived from their assembling together.

"It is to be presumed that the Legislature that passed the joint resolution providing for taking the popular vote as to the assembling of the present Convention, would have provided a mode of obviating the difficulties and embarrassments attending an election in December, to the convening of the Legislature in January next.

"But it was a subject practically beyond legislative control, for it was impossible for that body to foresee and in advance determine at what period this body would end its labors, or on what day it would submit its work to the people. No action could be taken by them, because it was a matter for which they could not provide. It was a subject intimately connected with that of the submission of the present work of the present Convention to the people, a duty which specially devolves upon the Convention. If they believe the election in December next presents an obstruction, or greatly embarrasses the people, and will in some measure tend to prevent them from passing fairly and fully upon the merits of the instrument submitted, it is within the scope of their authority, and clearly within the line of their duty, to take all the steps necessary and proper to enable the will of the people to be freely and fairly ascertained.

"The direct expenses of the State arising from ordering the election, issuing proper notices, preparing, printing and distributing instructions and forms to the different officers of the State charged with due execution of the election laws, together with the expense entailed on registration, will not fall short of $30,000, and may greatly exceed that amount. The mileage and per diem of the Legislature may add and probably will reach the sum of $100,000; that of the three last Legislatures exceeded that sum. The other contingent expenses will probably reach the sum of $30,000.

"This expense and loss of time to the voters of the State would not fall short of $150,000. In addition to this it must be borne in mind that there is practically no limitation on the power of the Legislature to creat a public debt, and but little limitation on their power to appropriate public money, we may safely assume that other expenses incurred by them will increase the estimate of expenses before made, and that the total expense to the people and the State of this unnecessary and useless election and assembly of the Legislature will exceed $300,000. Furthermore, under the Act of Congress of 26th of July, 1866, providing that the Legislature of each State, which is chosen next preceding the expiration of the term for which any United States Senator from such state is chosen, was elected, shall on the second Monday after they meet, elect a United States Senator, it becomes the duty of the Legislature which meets on the second Monday in January next to elect a United States Senator. If prior to the 4th of March, 1877, a new Legislature should assemble, organized under the provisions of the Constitution that may be framed by this Convention, it would also be beyond all doubt a Legislature chosen next preceding the expiration of the time for which one of the United States Senators from Texas was elected, and it would also be their duty under the Act of Congress to elect a United States Senator.

"If they did not exercise the power a very serious question would arise as to whether the Legislature that met in January, 1875, was the proper body to elect a United States Senator. If the Legislature, organized under the provisions of the Constitution framed by this body, should elect a United States Senator, then it would result that there would be two persons both elected, claiming at the same time to be duly elected to the Senate of the United States.

"By refusing to postpone the election of December next, we become directly responsible to the people for all the expenses incurred and all the other evil consequences resulting from this state of affairs.

"Again, if the Convention should work harmoniously together, there is no reason why they may not complete their work and have a Constitution ready for submission to the people by the first of November next. The Convention of 1845, whose duties were very arduous, involving as it did a change from an independent republic to a State in the Union, sat only fifty-three days. If, then, we can within sixty days complete our work, there is no good reason why it should not be submitted to the people on the first Monday in January. This would give them sixty days to consider, and the Convention of 1845 did not give as much as sixty days' notice. That Constitution was framed on the 27th day of August, 1845, and ratified by the people on the second Monday in October, 1845. The Convention of 1866 submitted their work to the people with notice of only sixty days. Since then the means of communication throughout the State have greatly increased, and now within sixty days information can be conveyed throughout the State as fully as it could be done in ninety days in 1845 or 1866. If, then, in accordance with affirmed precedents in this State, this body should complete its work within sixty days and submit it for the acceptance or rejection of the people in January next, as we believe can be done, and probably will be done, we would have the spectacle of a Legislature assembled at a cost of thousands of dollars, to our already tax-burdened people to accomplish nothing whose official existence, if the Constitution was submitted to the people on the first Monday in January, and on that day accepted by them, would end on the day it commenced. By virtue of the power which this Convention has to regulate the time, manner, and conditions on which its work shall be submitted to the people, we believe it can prevent the occurrence of such a state of things. It is a power incidental to and growing out of the express and unqualified grant of power to them from the people to frame and provide for putting in operation the Constitution. Its exercise is necessary in order that the people may be able at the least possible expense and without embarrassment from other matters growing out of the assembling of the Legislature to vote fully and fairly on the merits of the instrument submitted to them.

"The undersigned have examined the subject in its various aspects, and the ordinance which they herewith submit, makes provision so that in case the proposed Constitution is rejected, elections for members of the Fifteenth Legislature and other State, district, and county officers may be ordered by the Governor. It also provides for the continuation in office of the present incumbents until their successors are elected and qualified.

"Should there arise any great unforseen public emergency before the Constitution is voted upon, the Governor, under the provisions of the ordinance reported, would have the power by his proclamation to convene the Fourteenth Legislature in extra session.

"The majority of the committee cannot see how or in what manner any conflict of authority or serious convenience or injury to the public interest, can result from the passage of the ordinance contemplated, nor have they any reason to apprehend any conflict from any quarter. On the contrary, they believe it will be the duty of every officer of the State, from the highest to the lowest, to coöperate earnestly and cheerfully with the Convention, in saving this heavy and worse than useless expense to the State, and in preventing all the inconvenience, conflict, embarrassment, and confusion which will be certain to flow from the election in December next.

"It is to be regretted that the committee are not of one mind on this important matter. But the power of the Convention to pass the ordinance in question appears so well founded and so clear, and the duty of exercising that power so imperative that they do not hesitate to recommend the adoption of the accompanying ordinance, which they have prepared as a substitute for the resolutions and ordinance that were referred to them.

"Respectfully submitted
"CHARLES DEMORSE,
"F. S. STOCKDALE,
"C. S. WEST,
"JOHN HENRY BROWN."

"While I did not participate in the preparation of the ordinance and report on the subject, I concur with the majority of the committee in their conclusions.

"J. H. REAGAN."

On motion of Mr. Stockdale, Judge Ballinger read the minority report:

### *Minority Report*

The minority set forth that they were unable to recognize, on the part of the Convention, any rightful authority to put in force the ordinance recommended by the committee. The Convention was elected by the people of the State under a law of the last Legislature, its purpose being specified in the language: "that a Convention to frame a new Constitution for the State of Texas shall assemble on the first Monday in September for the purpose of framing a new Constitution." The power vested in the Convention is limited to framing, planning, devising, and forming a Constitution and to submitting the same to the people of the State for adoption or rejection. The members signing the minority report thought it not merely a political duty, but the Convention was legally and indispensably bound under the Constitution to the course of action indicated. The Convention of itself had no power to establish a Constitution or any part thereof. Whenever a Convention decided to submit a Constitution to the people, it had no power of sovereignty left, either executive, legislative, or judicial. Where, then, did the Convention get the power to put in force a measure like the one recommended by the majority report, which required submission to the people and adoption by them before it had any binding force? The friends of the plan for postponing the election in December had set forth the economy of the plan. The Legislature had, in view of all things, refused to postpone the election. It might be that they thought they would be depriving the people of their legal officers and prolonging the terms of those already occupying them. If the Constitution were not ratified it would, in effect, prolong their offices two years longer. It was claimed that this would be no greater expense or occasion no greater result than inconvenience. Whatever might be the result, the minority believed that cognizance of it was no part of the duty of the Convention. If the Convention could suspend a general election and prolong the terms of officers, they did not see what the Convention could not do. It could suspend all the functions of the legislative, executive, and judicial officers of the Government.

The minority report was signed by Judge W. P. Ballinger and Mr. J. L. Henry.

Mr. Dohoney moved that the majority and minority reports and the resolution recommended by the majority be postponed, and made the special order for the next day at 10 o'clock, but afterwards, on the suggestion of Mr. Waelder, it was made the special order for the second day, and 400 copies of both reports were printed.

After the reading of the reports of the committee on postponement of the election the remainder of the day was consumed with the introduction of resolutions, which were referred to the various committees.[23]

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[23] A majority of the leading papers of the State took the side of the majority report and favored postponement of the December election. The *Houston Telegraph*, September 22, dissented and praised the minority report, saying the minority had the legal side of the controversy. See the *Galveston News*, September 25; *State Gazette*, September 23, and the *San Antonio Herald*, September 25, 1875. The last named paper admitted that the majority were without legal ground, but said they were right and the people would applaud their work for economy.

## FIFTEENTH DAY

### WEDNESDAY, SEPTEMBER 22, 1875[24]

(The fifteenth day was consumed with the introduction of resolutions, which were referred to the various committees.)

## SIXTEENTH DAY

### THURSDAY, SEPTEMBER 23, 1875[25]

### *Postponement of the General Election*

On motion of Mr. Stockdale, the Convention proceeded to the special order for 10 A.M., being the majority and minority reports of the special committee on postponing the general election, and the resolution recommended by the former.

**MR. McLEAN** raised the point of order that the adoption of the ordinance recommended by the majority could not come properly before the Convention, except on a motion to that effect.

**THE PRESIDENT** ruled that the fact that the report was taken up from the table took with it the motion to adopt.

**MR. McLEAN** then moved that the special order be postponed and made the special order for Monday at 10 o'clock. It was lost.

Mr. West then spoke as follows:[26]

"Mr. President: I am afraid that the remarks I have to make will not justify a change of position from my seat to the front of the Speaker's stand, but I take it as a desire of the Convention to hear all that can be said on this subject from any quarter. As a member of the select committee, who recommended the majority report, it may be proper for me to explain the reasons influencing the committee, as the same reasons may help the Convention in arriving at the same conclusions. The committee has been patient and conscientious in the investigation of the subject. This applies to the members advocating and recommending both reports. I believe the Convention will consider it with the same patience and conscientiousness.

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[24] The proceedings for this day were taken from the *State Gazette* (Austin), September 23, 1875.

[25] The proceedings for this day were taken from the *State Gazette* (Austin), September 24, 1875.

[26] This speech was reported *verbatim* in the *State Gazette* (Austin), September 25, 1875.

"The first question that presents itself is, what are the powers of this Convention, and to arrive at a conclusion on that point, we must consider the source of that power, how granted, and the extent of that grant. The source of this power is in that section of the bill of rights to be found in the Constitutions of 1845 and 1866, that constitutes the ground work of every free government and is found in the fact that the people have an indefeasible and an inalienable right to alter or abolish their form of government in such a manner as the people may select. In the exercise of that right, which the people of Texas have in common with other states of the Union, they have at the ballot box and by petition and memorial presented to successive Legislatures, demanded the redress of the grievances under which they labor under the present Constitution. The Legislature, in response to that demand of the people, passed a joint resolution providing for the assembling in this city, on the first Monday of September, 1875, of a convention to frame a new Constitution for the people of Texas and to provide for the submission of the question whether there should or should not be a constitutional convention at that time. The people responded in the affirmative, and in accordance with that vote we are here assembled today in the act of framing a new Constitution for the State. It may be observed, Mr. President, that in the joint resolution providing for the call of this Convention, that there is nothing which provides how or in what manner, or when, or to whom, the results of its deliberations shall be submitted. It will be perceived that there is no clause in it which provides that the people shall pass upon it at all, either to approve or reject. It simply provides that a convention to frame a new Constitution shall assemble at the City of Austin for the purpose of making that instrument. Their work when done is not required to be submitted to the people, and, not being required to be submitted, it necessarily omits to state how, when, in what manner, and to whom it shall be submitted. It left the question to this Convention whether it should be submitted or not, and, if submitted, how, when, and in what manner. This, then, is the grant of power, the grant of power of attorney to this Convention by the people. I say by the people, for the Legislature had no power—being itself the creature of the people—to prescribe how or in what manner it should be submitted, had no power to prescribe limits to this Convention or to say how it should sit or what disposition should be made of its labors, and their joint resolution derived its sole vitality, not from its passage by the Legislature, but from the action of the people at the polls breathing life into it, otherwise it would be only so much waste paper. It then becomes the act of the people and we assemble under it with that as the sole guide and the limit of our power. I know that a great deal has been said and that more will be said to the effect that the language used in the joint resolution does not warrant the conclusions I have drawn from it, that the meaning of the word "frame" is not that the Convention can make or establish a Constitution, but can only draft a plan of a Constitution. I have been at some pains to examine the authorities on this question, and the result is, in my opinion, that the power could not have been more expressly or plainly granted and no word more appropriately selected to clearly convey it, than the word used.

### *Construing the Meaning of the Joint Resolution*

"In Webster's Dictionary, page 478 of the edition of 1864, he says that frame is 'to make' as 'to frame a law.' It is the usual and common form of expression when a law is to be made. One does not say to plan, to devise a law, but to frame, to make a law. Richardson's English Dictionary, volume I, page 845, says that the word 'frame' means 'to make, to effect.' From Beattie's *Judgment of Paris* comes the following line:

'Virtue's fair model *framed* by wisdom's hand.'

"In Soule's *English Synonyms*, page 170, we find that 'to frame' is the synonym for 'to make, to constitute.' Suppose that it should have been said in the joint resolution that we are authorized to *constitute* a new form of government instead of frame one, the term would have been quite accurate and at least the synonym for the word actually used. Suppose the word 'make' had been used, would it not have given us just the same power? But the Legislature preferred to use the word 'frame,' or, in other words, to direct us to constitute a government, meaning that we should be the 'framers,' the 'makers,' the creators. Chatterton in his Christmas Hymn uses the phrase:

'Almighty framer of the skies.'

meaning the *framer* or creator of the skies. I examined Shakespeare on the subject and in *The Two Gentlemen of Verona* one of the characters says:

*'Frame some feeling line.'*

"In the *Mid-Summer Night's Dream* again he says:

'He hath *framed* a letter.'

and again, in *Henry VI* the line occurs:

'By a nature *framed* to wear a crown;'

and again, in *Richard III*, he says:

'*Framed* in the prodigality of nature.

"The use of the term in the sense of 'making' or 'creating' is not confined to the poets, but also is used in the same sense by law writers and courts. In Segwick on *Statutes and Constitutional Construction* it is used in the same sense. And in *Cain* v. *The State*, 20 Texas, Judge Wheeler uses it in the same sense. The Legislature, instead of the word 'frame' would have used the words 'provide,' 'plan and submit,' 'propose' to the people, if it had been so intended. I ask our friends of the minority to find any case where it was intended to limit the agent, if the limitations are not specified and expressly mentioned in the power of attorney. I do not say that in many or even in most instances Constitutions are not submitted to the people, but the question here is, what particular power this particular body has on this subject. Soule says that the power to frame is to 'make,' to 'constitute.' If this be the correct definition, we have the power to make, to form a Constitution without submitting it to the people. I not only conclude as much from the ordinary meaning attached to language by eminent authors as well as by common people, but from the experience of other states in framing Constitutions; for in no less than thirty-eight instances where state constitutional conventions have been called together to make or to frame new constitutions, they have done so in each case without submitting them to the people, and nearly as many constitutions have been made in this country without submitting them to the people as have been made by submitting them to the people, therefore, it is nothing novel or strange that this power should be conferred upon us.

### *The Powers of the Convention*

"If, then, we have the power given to us by the people to create an instrument without submitting it to them, we have the power to make a portion of this Constitution absolute and a portion we can submit to the people. If, then, we have the power to reorganize and recreate the entire legislative department of the Government and give it new powers, we can postpone the exercise of its present powers, while this process of reorganization is going on.

"If, Mr. President, I repeat, we have the greater power to form absolutely and to constitute anew the legislative department, I say it necessarily follows that we have the lesser power to suspend temporarily or to change the time of meeting of the legislative branch of the Government. It is a well established principle of law, which will not be disputed on this floor, that the grant of the greater power includes the less. It is a maxim of the law, and I quote the same from Mr. Broom's *Legal Maxims*, a maxim, I believe, ascribed to Lord Coke, that the 'greater always contains the less.' *Omne majus continet in se minus.*

"Just as the power to convey lands includes the power to lease or all the lesser powers combined, so within the greater powers belonging to the Convention there resides or is contained the lesser power, and they can without doubt exercise it. The position of those of favoring the majority report is this, that after examining all the authorities, we are forced to the conclusion that we, having the legislative department of the Government now actually in a process of reorganization, can postpone for the present its assembly, keeping it as it were in a state of suspended animation, while we correct the evils that exist in that body.

"I know that some, perhaps many, will be found who will claim that these doctrines are new and unfounded in authority, but there never was a greater mistake, for they are as ancient as the republican form of government itself; in this country they are not exceptional, but the usual mode in which this power is exercised.

### *What the Courts Say about It*

"As I said before, in thirty-eight constitutional conventions has it been exercised and the question has again and again been brought before the courts of the country and opinions delivered by the Supreme Courts of the states, and in the majority of instances, both as regards respectability and intelligence, the decisions have been as I have stated. The Constitutional Convention of Massachusetts, which met in 1853, comprising the ablest men of that state, declared in favor of the power.

"In Virginia, I read from volume I, page 7, of *Virginia Cases* in the case of the *Commonwealth* v. *Dondell*, where the question was raised as to the power of a peoples convention to pass an ordinance punishing the counterfeiting of constitutional money. The convention passed the ordinance. Dondell was tried and convicted and raised the question of the legality of his conviction under the ordinance, raising among other questions in arrest of judgment the following:

" '3. Because the Convention were not delegated, authorized, and empowered by the good citizens of this Commonwealth to *legislate generally* for them, more especially to make penal laws to affect the lives of the citizens.' The General Court of Virginia, being then its highest Court of Appeals, decided unanimously that the Convention did have general legislative power, and the judgment of conviction was sustained. That court decided that the Convention had the power to legislate and to make penal laws to protect the rights of the people. I know that it will be represented that this Convention is a revolutionary body. That, in my opinion, is a complete begging of the question at issue. The question is, does the power *exist* there? It may be that it had only been *used* in revolutionary times or great public emergencies and should be used only on extraordinary occasions, but that is no answer to the question or to the existence of the power. Whether used in revolutionary or peaceful times, it matters not, the power does exist. Let those who oppose the majority report show that the authority does not exist, and is not exercised if they can. Upon that point I also call the attention of the Convention to a case to which I attach importance—a recent case. The respectability and reputation of the court is beyond question. It is reported in Phillips' *North Carolina Reports*, being the case of the *State v. Sears.* North Carolina is a good old conservative state, and has been justly celebrated for the learning and integrity of its judiciary from its earliest formation to the present time. The names of Gastin, Ruffin, and Pearson are respected and venerated all through the land. Judge Pearson was then Chief Justice and concurred in the opinion delivered. The question arose in this way: The Constitutional Convention assembled in that state had passed an ordinance concerning crimes and punishment. It is not necessary for me to go into the particulars of the case. The ordinance was passed by a constitutional convention. At that time North Carolina had a penal code in full force, and the ordinance was not submitted to the people, and under this ordinance a party was tried and the case decided in his favor and carried to the Supreme Court. This was in 1867. The opinion was written by Judge Reade, but was concurred in by the whole court. The convention, I may observe here, was called by the President's proclamation and was authorized simply to put in operation a state government. The court said: '*We do not admit that the powers of this convention were limited, except by the Constitution of the United States.*' That is the recent decision of a learned and able court, after no doubt having been argued by learned counsel, able to present all the precedents and law on the subject, and yet by this court it was held that the convention, thought called only to frame a constitution, was not limited in its powers, except by the Constitution of the United States. It was in fact, with that exception, without limitation, and was clothed with full and complete powers, although not organized with reference to the special objects in which it legislated.

"I refer you to another case found in the *35th Georgia Reports,* page 28, the case of *Slaughter* v. *Culpepper,* Judge Lumpkin presiding. I presume there is no state in the Union, unless it may be Virginia, South Carolina, or Massachusetts, where the general powers of government, the limits to constitutional authority—and by this I mean the limits to the authority of constitutional conventions and state legislatures—has been more ably discussed than in the State of Georgia. Judge Lumpkin is known wherever English jurisprudence is studied. In 1866 the Constitutional Convention of Georgia provided and made an ordinance on rules of evidence in courts of law, concerning contracts payable in Confederate money, and determined the amount and character of evidence that should be received. The court in passing upon it said: 'The ordinance was intended to do in this matter what we think the Legislature could have done . . . . We hold the legislative power of the Convention as competent to pass such an ordinance as that under consideration.'

"How much further the court would have gone we do not know, but it decided the Convention did have legislative power and that that legislative power extended so far as to define the rules of evidence to be adopted in the trial of civil cases, just as the court of North Carolina decided that it had the right to decide what rule of procedure should govern in criminal cases Hence it seems from the authorities that a constitutional convention has power to act in both civil and criminal cases, has the right to exercise legislative power, just as we claim that this Convention has the right to exercise its power in the adoption of the resolution proposed by the majority report. I have referred to these cases, and many others might be cited, to show that these conventions who have assembled with special limitations in their power are held to possess such powers but much more so have we that power when assembling without limitations or restrictions at all as in our own case. I wish it to be understood distinctly that we hold that it is not at all necessary that we should establish the proposition that this Convention has the powers of the Government in order to sustain our position. In the report it was not deemed necessary to take any such position but if it had been taken it could have been sustained by the higher authorities. Mr. Livingston, of New York, Mr. Dallas, of Pennsylvania, and many eminent Southern statesmen have held to the doctrine that these conventions have all sovereign power when assembled and can act as they deem best for the public good. The same doctrine was held by the Conventions of New York, Illinois, and Pennsylvania, and the contrary view has never been maintained in any respectable textbook until after the action of the Secession Convention of 1860 and 1861, when the power was used, and I believe was rightfully used, to pass upon and to inquire into the relations existing between the general Government and the State Government. After that some text writers, since 1866, advanced the theory that the states did not form the Constitution, but that the Constitution formed the states, and held that the states did not form the Constitution but that they derived their power from and by recognition as states under the Constitution, which reverses every theory of the fathers on that subject. A few textwriters, I say, since the war, deeply imbued with that doctrine, have put forth without the support of adjudicated cases, that these conventions have no powers at all, that they can simply propose and have absolutely no other power. In one textbook it has been gravely discussed and solemnly decided that they have not the power to appoint even a Sergeant-at-Arms and in another it is gravely discussed whether they can actually buy postage stamps, paper and stationery!

"These latter day lights look at it from an altogether different standpoint from that of the fathers, and are the only authorities that can be mustered into service and used to sustain the argument against us. I have referred to the ancient practice of conventions as in force, and the binding effect of thirty-eight conventions, sustained by all the great luminaries of the law, compared to whom the opinions of those who hold to the contrary, as is found in these new books, is as but the light of a tallow candle shining in the light of the glorious sun, when they assert that there is no attribute, no shadow of power in this body further than to merely draft the instrument to be submitted to the people.

"On this question Judge Roberts, of this State, on the first of December, 1860, in a learned address delivered in this hall, made some observations which I consider very valuable and pertinent to this Convention. It is well known that he carefully prepares himself on every public question before addressing the people, and on this occasion, when he had to address the assembled wisdom of the State, it was natural that he should address himself to his task with more than usual preparation. He says:

" 'The Legislature may also provide for a convention of delegates representing the people in their sovereign capacity. Or such convention may be assembled without a call from the Legislature, or from any department of the State Government, by concert among the people themselves. Such has been the mode of making the Constitution in several of the states (Tennessee, Michigan, Arkansas, and New York) which were acquiesced in by the grievously constituted authorities, and went quietly and peacefully into operation. There is no authority specially delegated to any department of the existing government to call into action this high power of the people. Nor is its exercise made dependent upon any will but its own. Nor is there any invariably established mode of evidencing the sovereign will, so that it may be recognized as the fundamental law of the land, otherwise than its being declared and put in force through general acquiesence or by the power of the people. Or in other words, there is, and can be, no artificial test devised for ascertaining where the controlling intellectual and physical strength of a people has manifested its will in any particular instance. Should the pre-existing government fail to recognize the act of a convention, as declaring the will of the sovereign power (because it did not represent the people fairly, or for any other reason which he may assign), there might be a conflict between the old and the new government, which could be decided only by force. *Being a political question, courts of judicature are not competent to decide it.*'

"Judge Roberts said that a convention might assemble without a call from the Legislature or any other department of the State Government. Wisely said, too, for it might happen that the legislative, the executive, and the judicial might determine that there should not be a convention, and if the modern doctrine is to be established that one cannot be called into existence until it has run the gauntlet of one or all of these departments, then they are masters and the people are their slaves.

"Such has been the mode of making a constitution in New York, Tennessee, and Arkansas. North Carolina hesitated to give the right of government to Tennessee, and the sturdy sons of the mountains got together and called a constitutional convention, created the State of Franklin, and would have formed an independent state. North Carolina then determined to interpose no further opposition to the wishes of a part of her people, but let them go without further interference, and they formed the present State of Tennessee. Regarding the action of a convention, a pure political question, the ordinary courts are not competent to pass upon and set aside their ordinances. Acting upon this opinion, Judge Roberts took his seat in the Constitutional Convention of 1866, surrounded by some of the ablest men that ever adorned the councils of this State. Some of them are living now, and one of them (General Whitfield) is on this floor now and supporting this ordinance. Many of them have gone to their long rest, Judge George W. Smith and others among the number. Judge Roberts acted upon what he held to be right and voted for and passed ordinance after ordinance in the Convention of 1866, providing for the readmission of Texas into the Union; for the relief of Orange County; for the relief of James M. Green, and twenty other ordinances of like character, clearly establishing the doctrine here as laid down in Virginia. In Georgia, North Carolina, and Tennessee, it was held that the constitutional convention was the sole judge of its own powers, and must necessarily be the sole judge of the subjects which shall be touched by it, and there was no power in the state above it to pass upon its powers. I may as well say here as elsewhere a word or two as to the cases supposed to sustain the views of the minority. I believe no stronger case can be presented by them than the recent Rem case. Some of the delegates may not have access to the book, and they will pardon me if I give a brief outline of the case, and I ask my friends who entertain different opinions to correct me if I mistake. I regard it as an authority more in favor of the action proposed by the majority report than as opposed to it. In the year 1871, and on the second of June, the Legislature of Pennsylvania, in response to memorials from the people of that state, asking them to call a constitutional convention, passed an act in guarded terms. My position here is that this Convention derives its powers not from the act itself so much as from its adoption by the people. This is true in all cases where it is not limited, and in our own case it is not limited. In the Pennsylvania case the act reads 'that the question of calling a convention to amend the constitution of the state shall be submitted to the people in October next.' It provided for no delegates, specified no number, nor when they should assemble. It was purely and simply the calling of a convention to amend.

"The succeeding year (in April, 1872), in response to that vote of the people, the Legislature of Pennsylvania passed a remarkable act, providing that a convention should be held to make a constitution for the people, and they provided that delegates should be elected in a mode never before known in that state or any other. In determining the case the Supreme Court of Pennsylvania held that they had not been properly elected so as to represent the sovereignty of Pennsylvania, and that they were not elected in a manner in which the voice of the people of that good old commonwealth could be heard. For instance, it provided that the people should not vote in some counties for more than fourteen out of twenty-eight candidates, and that the twenty-eight receiving the highest number of votes should be declared elected. In other counties the voters could vote for no more than four candidates and the six highest were to be declared elected; and in this manner the whole ninety-nine delegates were elected. When they met all sorts of limits were placed, the act of the Legislature calling them together, upon their powers, one of which was in the following words: 'And the said convention shall submit all its amendments to the people to be voted on.' Another restriction was that on a vote of one-third of all the members any amendment should be submitted to the people separately; another was that they should make no change whatever in the bill of rights, nor establish any court of equity, and that the convention should submit the amendments in such manner and no other, as the Legislature prescribed. The convention, when it met, found this act of the Legislature in its way, as we today find the election laws of this State, though we are clothed with far more and different powers, and they also found in their way a corrupt and hostile Legislature sitting at Harrisburg. They assumed that the right way of submitting their Constitution was by fairly and fully putting it to a free vote of the people of Pennsylvania, but the election law of Pennsylvania stood in their way, and they could not do so under its provisions, and I tell you, gentlemen, that if there were a law today on our statute books which opened wide the doors to corruption, bribery, and fraud, so that the voice of the free people of Texas could not be heard on this subject, that I for one would advocate its being swept from the statute books by this body, so that we could give the people a free and fair election to the end that their voices might be heard fully upon this question. The Convention of Pennsylvania set aside a part of this election law relating to the City of Philadelphia, and the bold officers interested in keeping the old law in full force applied to the judges for relief, and they granted an injunction, and the Supreme Court held that the convention had no power to pass the act with reference to the election in the City of Philadelphia. The convention was still in session when the case was decided. Some of the ablest men in the state, some whose reputations were far more widely extended and more justly lauded than those on the supreme bench, men of national reputation, examined impartially all the precedents on the subject and reported to the convention to the effect 'that the convention still had the power,' notwithstanding the decision of the court to the contrary, but did not insist upon its exercise, as they did not desire to come into conflict with any part of the state government. They therefore agreed that the election, as far as Philadelphia was concerned, should be held under the law as passed by the Legislature, but elsewhere as they directed. I think this case, when considered clearly, becomes an authority for our position. It was said by the court that the constitutional convention was limited in its powers by the act which created it, and, in addition to that, that they were not elected by the people, but in some unusual and irregular way. The court said so. It said 'the voters did not elect the delegates,' and of the 133 members elected less than one hundred were elected by the people. Some of the delegates never received a single vote, but were appointed by men who were themselves not elected. These facts must be taken into consideration when the opinion of the court is considered and cited against us. The court goes on to say further that the convention, in passing that act, deliberately refused to obey the law as to the submission of the judiciary clause in the Constitution to the people. The question came up in that case, as to their action on the judiciary clause, whether the courts could control the convention or not, and it was held that the question was a political one, and that they could not. I may refer to this case further hereafter in my remarks. The simple question in that case was whether a convention *not elected* by the people could exercise these extraordinary powers. I will say further that when the matter last came up before the convention, after the decision of the court, they solemnly appointed a committee to inquire into the subject further, although it was no longer a matter of importance to them whether the court was with them or not. They knew that the great mass of the people of Pennsylvania were at their backs and willing for them to regulate the affairs of the state. The committee reported that both on precedent and principle it was beyond the power of the Legislature to put a limit on the power of the convention. The report was signed by Governor Curtin, Governor Bigely, Senator Buckalew and others. By a vote of 66 to 13 in that convention, they decided that the power was with them. That is the history of the Pennsylvania case. I hold, then, that both on precept and principle, that inasmuch as the act assembling us together put no limitation on our powers, and failed even to provide for the submission of our works to the people, that under the well recognized powers belonging to conventions of this character whenever the right to adopt absolutely the Constitution exists in them that it necessarily carries with it the lesser power to temporarily suspend one branch of the State Government, the Legislature, for instance, or to act upon a portion of it at once and make it final and not submit it to the people at all. But if it be true that we have only as it were to plan, to sketch, to draft a plan of government according to the opinions expressed in the minority report, if we have that power only, I think it is quite certain, unless all these authorities are wrong, that the power to pass this ordinance still exists in us and for this reason. The joint resolution leaves this Convention free and untrammeled as to how, when, and at what time this Convention shall submit its work to the people, or whether it will submit it at all. It is clear and admitted on all hands that we have the power to provide the mode and manner, terms, time and place of submitting the Constitution to the people. This power necessarily carries with it the power to make all provisions necessary, in our judgment, however erroneous that judgment may be. If we honestly believe that the election in December and the meeting of the Legislature in the January following, will tend to embarrass and in a measure prevent a full and free vote on this question—no matter how much others may differ with us on that point—then it is within the scope of our power to guard against this trouble. Upon that point I referred you to the Supreme Court of Pennsylvania, whose decision was made because that convention in Pennsylvania deliberately refused to submit the judiciary clause of their Constitution to the people. I referred to this case lest capital should be attempted to be made out of the decision. If we make a mistake in this matter confided to our judgment, and it is not necessary to a fair election, no appeal can be taken to the courts by us, and the error can be corrected only by the people themselves, in whom all power resides. So here we are to decide and determine this matter. We cannot put our consciences into commission, we must decide for ourselves. The question is, does the power exist in this Convention to put in force this ordinance, which is nothing more nor less than an ordinance concerning the submission of the Constitution to the people. I think without doubt it does.

"I contend, then, first: That the terms of the joint resolution calling this Convention into existence give it, in the lauguage of Soule to other lexicographers, the power to constitute, to form, to make a Constitution, and being entirely silent upon the question of submission to the people, this Convention can submit it or not, as they think best and wisest.

"Secondly: That if we are wrong as to the power of the Convention in that respect, then the power is certainly in us to submit our action to the people, and we can provide the time, mode, and manner, so that the people may vote fairly on it. This gives us the power to remove such obstacles as may exist in the way of the people, so that they may pass upon our work as fairly as possible. Before leaving this question I wish to draw attention to the fallacious idea that it was not the intention of the people to give us this power absolutely; that they intended that we should submit our work to them, and that although it is not stated in the law nor in the charter of our power, anywhere either by direction or by implication, that we are bound to follow it. I was surprised to hear the question mooted, and for the reason that there is no way of ascertaining the meaning of a statute or Constitution, except from the statute itself. The people were not likely to speak in an uncertain voice on so important a matter. It was a great grant of power, and with the full cognizance of its importance when they voted on that joint resolution, they made it, and it alone, the measure of our power. Mr. Sedgwick on *Statutory Construction* says: 'The intent of the Legislature is to be found in the statute itself, and there *only* are the judges to look for it.' How would gentlemen propose to ascertain the intent of voters except by their vote? At Galveston, for instance, there was no canvass, no expression of opinion. In other places the Convention was discussed; the question was never raised in many places whether they would or would not have the Constitution submitted to them. The question may have occurred to individuals during the canvass, but I deny that it was a question in the canvass in this State; and even if it had been, you could not go back into the canvass to get at our power from stump speeches. If any gentleman desires to make that inquiry, I tell him in advance that the universal public sentiment was averse to having any more legislatures meet under the present instrument. They wanted no more $8 a day men to assemble in this State, and we were sent here to stop that business; at least such was a part of my instructions, and for one I intend to discharge in all its length, breadth, and thickness, and take all reasonable methods of carrying out, the will of those who sent me here to do their will. Sedgwick says that the legislative interest must be taken by the word of the statute; and no words are used to put all these limitations in our laws. I hold that in respect to an act of the Legislature the courts are compelled to seek for the meaning of it in its words, and that they are not at liberty to suppose that they meant something other than what they have said. Here we are told to make a Constitution and not one word is said about submitting it to the people; and upon all the rules of statutory and constitutive construction, and by all laws governing the interpretation of instruments of this character, we have the power necessary to put this instrument into force. Just one word more. If we have the power I do not hesitate to say it is our duty to exercise it. The people expect us to exercise it. If we do not exercise it the majority report shows that first and foremost as likely to result from our refusal to act will be the dual election of United States Senators, and we may have two Senators applying for the same seat. This ordinance proposes a plan to avoid this, it proposes a means of avoiding all the unnecessary expenses of an election. If an election is held in December the result will be the election of ninety new members of the lower House and twenty new Senators. The Senators will be elected for six years; and members of the lower House for two years. There will spring into life from that election a band of fresh and hungry office-holders in every county in this State to show the people what a beautiful Constitution this $8 a day instrument is. They will tell the people what a miserable failure we have made in forming a Constitution, and that the salvation of the country depends upon their holding office for the next two and six years. They will embarrass us with mere personal questions. If we fail to do our whole duty we are not worthy to represent the breed of men who sent us here. I hope no one will hesitate. I believe the power is clear to do what we have proposed to do, but if I believed the power was doubtful I would give the people the benefit of the doubt and save the confusion and expense resulting from our failure to discharge our duty." (Applause.)

JUDGE BALLINGER replied in favor of the minority report on postponement of the election. He denied that the Convention had the power to pass the ordinance recommended by the majority report, and said the only legal way to have the ordinance put into effect was to do so after submitting it to the people. He thought that whatever the expense incurred might be, it would be as nothing compared to the danger arising from a bad precedent, and to the evils likely to arise from conflicting powers of government. The speaker said he had wished the matter might be settled without any speech from him: he had considered it in an honest, conscientious way, and only desired to do his duty to the country. He had decided the matter in a manner which he believed would stand the tests of time. He declared that all political power is inherent in the people to alter, abolish, or reform their governments, and that such power was not vested in a convention or any other power than the people themselves. Had the people delegated that power to the

Convention? He said there was no necessity of the Legislature having provided that the work of the Convention should be submitted to the people, as it was always understood as a matter of law that the work of a convention should be submitted to the people. The people, when they elected these delegates, of course, supposed that they would submit their action back to them, and did not for a moment suppose that this body would arrogate to themselves the power to make the results of their labors a finality. He said the people had sent them there to make a Constitution, not to pass ordinances to suit their own fancy. He quoted from the decision of the Supreme Court of Texas, where had presided some of the State's greatest men, some of whom had helped to make the Constitution of 1845, to prove that the Convention had no authority to do otherwise than make a Constitution, and that said Constitution should be ratified by the people before it had any legality. The Constitutional Convention of 1866 had passed ordinances which had always been considered matters of doubtful legality, and in proof of this decision be quoted from the Supreme Court of Texas when that court consisted of Judges Moore, Coke, Donnelly, and Willie.[27]

JUDGE REAGAN followed in support of the majority report. He cited the leading cases in Texas judicial history, as well as the activities of many state constitutional conventions, to substantiate his arguments.[28]

MR. DOHONEY succeeded Judge Reagan, and spoke in favor of the minority report. He prophesied anarchy and confusion if the majority report were accepted by the Convention, and referred to the possibility of conflict with the executive. The Governor, he said, was bound by his oath to support the existing Constitution, and this oath was binding upon him until the new Constitution was submitted and ratified by the people. He quoted Jemison and Cooley in support of his position.

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[27] Judge Ballinger was one of the most capable men of the Convention. It is a matter of great regret that his full speech was not printed by any of the papers.

[28] The *Austin Statesman,* September 24, 1875, promised its readers a full summary of the speeches of Judge Reagan and Mr. Dohoney, but did not print them.

Mr. Wright, colleague of Mr. Dohoney, from Lamar, spoke next and advocated adoption of the majority report and resolution.[29] He said: "I shall have to ask the kindest consideration of the Convention while I give very briefly the reasons and views that will control me in my vote upon this question. The question, I admit very freely, is one of great gravity and importance because it involves the responsibility of the present executive in executing a plain law under a plain provision of the present Constitution, and the duty and action of the Convention exercising its sovereign power and authority in preventing a useless and improper thing.

"It is impossible not to realize the delicacy of the question. The executive of the present Government, having taken an oath to support the Constitution, and the laws thereunder to execute, finds upon the statute books a law which requires him, under that Constitution, to issue a writ of election, in order that a Legislature may be elected and convened under the present Constitution for the purpose of taking into consideration the wants and necessities of the people.

"Indeed, Mr. President, this is in fact and in truth a delicate question looked at from every standpoint; but I take it for granted that the executive of this State is a man of sense and capacity, fully able to comprehend this question in all of its scope and meaning, and who will not rashly and unwisely throw himself against the wishes of the people as expressed by this Convention, and hence I have no trouble in coming to a conclusion easy and peaceable in the solution of this question. It has been said with great dignity and gravity that the passage of this ordinance will be the exercise on the part of this Convention of a revolutionary power and authority which cannot be justified on any ground or state of circumstances.

"Mr. President, I would like to ask where do gentlemen find the power in the present Constitution to call this Convention? Can you find it in your Constitution? You find provisions there for amending the Constitution, but nothing else; but you must go outside of the Constitution for the authority and power to have a convention to frame a Constitution, and that outside are the people in all their majesty as sovereigns."

MR. BALLINGER: "If the gentleman will permit me, I will state, in answer to this, that if I understand the organization of our Government, and the constitutional powers of the Legislature, that it has all power, except what is prohibited by the Constitution of the United States."

MR. WRIGHT: "The gentleman throws himself somewhat against an opinion of the Supreme Court of the United States, in which it asserts that the Legislature is restricted and limited in its power.

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[29] Mr. Wright's speech was printed *verbatim* by the *State Gazette* (Austin), September 26, 1875.

I know the old rule of construction was that the Legislature could do anything that was not prohibited, while on the other hand, the executive and other departments of the Government could do only what was delegated to them. But recently this idea has been somewhat modified, and I think very justly and properly, and now Legislatures are restricted and limited, though not limited in the organic law. For instance, they have no right to donate the money of the people to corporations or any one else, though there may be no restrictions on this in a Constitution. Members of the Legislature are elected and come here and swear that they will support the Constitutions of the United States and of the State of Texas, and then turn round, and with a muffled dagger stab the very instrument they swore to uphold and defend, by voting for the joint resolution calling a constitutional convention, in order to get rid of the very instrument they pledged themselves to each other and the country to nurture and protect. Now, what is this but a peaceable revolution? Yet gentlemen say that this Convention has been convened according to law, and that the Legislature had a right to call it. Yes, I say that the Legislature had a right to call it at the instance of the people; that is, the people by their sovereign will called it, and we stand here today as the representatives of their power and sovereignty. Thus we find we must go back to the first principles, the first of which is the principle of self-government. The right of the people to change their organic law whenever they see fit, is fixed in the center of the American principles of popular rights, and I trust that these great principles, written in blood upon their hearts will stand and endure.

'When wrapt in flames the realms of ether glow,
And Heaven's last thunder shakes the world below.'

"In the passage of the joint resolution calling this Convention, we have the members of the Senate and the House taking an oath to support the Constitution one moment and the next moment assasinating it. The reason for this is that the great principle is recognized that the voice of the people is heard in their meetings, in the manufacture of public sentiment by writers, speakers, and the press. This is what took place in the last general election, when they warned the Legislature by meetings and the manufacture of public sentiment by their speakers and the newspapers, that they were tired of the existing Constitution. The Legislature finally agreed to acceed to their wishes, and submitted the proposition to call this Convention. Do gentleman call this revolution? I say that every change in government at all is revolution. It may not be at the point of the bayonet. No blood may flow, and it may be without the violation of the existing forms of the law, but the revolution goes on all the same. I am glad to see that the Legislative Committee of this Convention, in their report, place the power where it rightly belongs—with the people, so that there may be no more dispute on that question. The terms of our Constitution are to the effect that you may amend it; and yet when you come to change it, it is revolution, because you have no right to do things men have sworn not to do. Yet the Legislature, acting in their aggregate capacity, passed the joint resolution to cut this instrument down, and did it in obedience to the will of the people, which was heard in their murmurs of discontent and fell upon the ears of their legislators like the voice of mighty waters.

"The Legislature passed the act and submitted it to the people whether they would have a convention or not. The people said that they would have it, and at the same election at which they determined it in the affirmative, they then and there elected delegates to go and carry out their will in the matter. What was this will? Why, to frame, that is, to make, to create, a Constitution for them representing their sentiments and wishes as to the form of government they desired. The Legislature had no right or authority to call a convention to make a Constitution, but they did not submit to the people the question or proposition as to whether or not they would have a convention. The resolution thus passed was simply an act to get the voice of the people in their sovereign capacity as to the fact of a change of government. And what else? Why to do whatever was necessary and proper in order to frame and put in motion and operation this change of government from an old to a new government.

"Is it true that the Convention cannot make a Constitution which will be valid and binding without its submission back to the people for their approval? Not at all; though I am in favor of submitting it back, because it was so understood in the canvass. But though we do this it is not necessary, for we have the authority to frame—that is to make—a Constitution which will and should be as binding and valid as though the people had ratified it at the ballot box. But if we fail to carry out their wishes, they may then call another convention and get rid of our work. What constitutes a state? The men, women, and children in it and nothing else, but they have vested in the electors the power to represent their will and to fix it as a representative fact in their organic law. This is the uniform rule, the recognized rule, for the people to declare at the ballot box their united action, what they desire in the matter, and not as was done in the Rhode Island case by unauthorized meetings here and there, and without a general rule for their action. If we mean by organized action, such as was had at the ballot box on this act of the Legislature, this was done completely when the people conferred upon their delegates the power to frame and make a Constitution.

"The question then is that there exists on the statute book a law which requires the executive to issue his proclamation for an election of members of the Legislature on the first Tuesday in December next. If this takes place, it will necessarily and unavoidably retard and obstruct the Convention from making a Constitution and submitting it back to the people. Now then, have we the power, under the circumstances, of preventing a large amount of the people's money from being expended to no purpose, and of interfering and preventing an obstruction of the work which we were sent here to perform. I think so, clearly; for the power to make conveys with it the incidental power to do whatever may be necessary and proper to effectuate and accomplish that object. Those of us who represent and believe the majority report to be right think that unless the executive is restrained in his action that it will retard the usefulness and action of this Convention, and will burden the State with a large and unnecessary debt. What we want is, that this election may be postponed until the Constitution we are preparing may be submitted to the people and a full and fair expression of the people at the ballot box may be had upon it. But it is said that this is revolutionary. Revolutionary in what? What do you mean by revolution? That the people have not the right to change their organic law? That they cannot give the power to a convention to carry out their wishes? Then let it be revolution. As I understand the principles of self-government, the power lies with the people, and when they accord the power to a convention the power is there, and if the Governor, or any other department of this Government, undertakes to interfere with the convention by obstructing the great objects which they came here to perform, they would have the right, as they did in 1861, to put the man or his authority aside. I say that the people did right in General Houston's case, did right to put him aside, because he refused to obey his oath and subscribe to what the people wanted who elected him to office. He was an obstructionist. If the executive of the State were to do as he did—were to obstruct in its mode of action this Convention—it is within the power of this Convention to take charge of the matter and defend itself from assault. As far as he goes, he is the executive of the State, and represents, when the House and Senate are not in session, the department in seeing that the laws are faithfully executed, and nothing more. I trust that nothing of this kind will occur, and I apprehend no danger. The Convention has original power and the right to remove all who obstruct its path. If this is revolution, let it be so; it is the voice of the people. The Governor, no doubt, thinks it his duty to issue his proclamation ordering an election of members of the Legislature, and if this Convention regard it as an obstruction in their way in making or framing a Constitution and submitting it to the people, then they have the right to pass an ordinance checking the executive and suspending the election law until such time as they may think proper."

### *Jemison and Cooley*

"My colleague (Mr. Dohoney), from Lamar, read a good deal from Jemison and Judge Cooley in support of the position he took. I am not deeply impressed with those authorities. I am convinced that my reading and learning, small as it is, on government has not been caught from such writers as Mr. Jemison and others who wrote for an object. Take it and read it, and you will find that the book was written and published to carry out the views of the North against the Southern States and to stigmatize them as traitors and revolutionists for presuming to judge on the merits of the old state rights theory of government. I say in all calmness that because we were opposed to the North on this subject, because we stood up in support of our idea of government, we are made to figure on the annals of time as rebels to society and to the country. It was a stronger power that conquered us. Brains never fought the principles involved in our late unhappy struggle; intellect never fought it, and the great questions of the people, the rights of the American people, and the rights of self-government, were decided by the sword and the bayonet rather than by reason and argument. Mr. President, could we of the South have had our case tried in an enlightened court of nations, what a different fate would have been ours! The great question of states' rights can never be broken down or obliterated in the Southern heart and mind. It is part of our history, and a part of our object and the purest and best form of government, for the purpose of protecting the rights of citizens and of the states, that was ever conceived. This book—Jemison's—was written to make the Southern States odious, to make their acts revolutionary; it was intended to create the impression that the people of the South never did have any idea of civil government, civil rights, or anything else. But I trust that the South will yet, by her representatives in Congress, and by her public men representing the true type of her manhood and statesmanship, stamp the book as a lie and a slander upon our people. The country may be flooded with written and printed books in the garb of law books for the purpose of injuring and discrediting us in the public mind (and such is Mr. Jemison's work), and they may be used by our own people against us on occasions when the rights of the people are at stake and involved in controversy; but such authors can never change the great heart of the American people from correct principles of self-government to fallacies and errors involved in glittering generalities that mean absolutely nothing but unsurpation and oppression. The book seems to have been written to defend the North in her actions in the Kansas troubles and to assail and misrepresent the action of the South. Why, Mr. President, Mr. Jemison maintains the monstrous and startling proposition that

Congress has the power to abolish states and state lines, and to establish a grand consolidated government, perhaps to be presided over by a sceptre and a crown. And this is the book from which my friend reads in support of his republican views. I, for one, cannot take and swallow these terrible teachings, for they are at war with every principle of free government I have learned during life. Such teachings and doctrines have no charms for me, though Judge Cooley may in his work on *Constitutional Limitations*, in soft and honeyed sentences, declare that Mr. Jemison's work was exhaustive on the subject treated. Yes, it is indeed exhaustive; it not only exhausts the subject, but obliterates, destroys the rights and liberties of the people. What? Take these works to guide us on fundamental principles involving the right of self-government? Never! Never! The principles it inculcates, I do not believe and never shall, and the objects for which the work was written was mean and ungenerous, and I despise and spit upon it with unutterable contempt.

"As I have said before, Mr. President, I regard it as right and proper to submit our work and labor to the judgment of the people and let them examine it thoroughly and critically in the aggregate, and then scan every provision with an eagle eye, and if it meets their unqualified approbation approve it, and if not reject it at once. Therefore let us do our whole duty, and when we have done this we can do no more. And in doing our duty, let us remove any obstruction that may hinder or delay us in acting in obedience to the wishes of the people in carrying out these great objects. If this be revolution, as the minority report would indicate, let it be so. In obedience to these convictions, I shall vote for the ordinance to suspend the election law." (Applause.)

MR. HENRY, of Smith, followed Mr. Wright, speaking in opposition to the majority report, and contended that the nearness of the meeting of the Legislature and the meeting itself should in no way interfere with the work of the Constitutional Convention. A convention had been held in Virginia in 1829, with James Monroe as President, and with some of the brightest intellects in the state in attendance. A Legislature was in session at the time. Was that convention afraid of the Legislature then in session? Not at all. The convention held its sessions in the Baptist Church of the capital city, and the Legislature in their usual place. The members of the constitutional convention had no right to say that the next Legislature would do anything wrong it was an assumption they had no right whatever to make. The convention had no right to usurp all the powers of government—legislative, executive, and judicial.

They were simply a convention to frame a Constitution, and not a legislative body at all. They were not there to strike down the departments of government; the state had an executive, a legislative, and a judicial department, all in good working order, and it did not become the convention, nor did they have the power, to interfere with their functions. Suppose the ordinance were passed and the people then refused to adopt the Constitution submitted to them. The whole state would be in confusion and anarchy. If the convention had power to prolong the tenure of office of incumbent officials for three months it could do it for all time. He thought delegates should pause and consider before they assumed such a stretch of power; he asked them to be calm, wise, and prudent, and to exercise no more power than was necessary to carry out the objects of their assemblage, to-wit, the framing of a Constitution.

MR. STOCKDALE, former Lieutenant-Governor, a delegate from Calhoun, followed Mr. Smith, speaking for the majority report.[30]

He said: "Mr. President, notwithstanding the great difficulties presented by the gentleman from Smith (Mr. Henry), I believe, sir, that no action which may be resolved upon by this Convention in the course of its deliberations, will be received with greater satisfaction, will be approved with more hearty approbation, than the passage of this ordinance. Not only, sir, because it will be in pursuance of the designs they had in calling this Convention, and in accordance with the duties devolving upon us, not only because there is no evil precedent involved in it, but because it is an announcement definite and certain that, notwithstanding the disposition of any part of the Government, the people are supreme. Its power is supreme, not because we are the people, but because the people are supreme and we are their delegates, not because we are the body of the people, but because the people only can act, under any circumstances, as has been plainly demonstrated by the delegate from Smith. The people can act only through their delegates. We are the delegates of the people, empowered by their voice, and not by the Legislature, to do their will. If I doubted as to their will, I should certainly doubt as to my own power and duty; but not doubting as to what the will of the people on this subject is, I do not hesitate or doubt as to what shall be my own action. I am, sir, no revolutionist, and there is no revolution in what is proposed to be done by the majority of the committee. The distinguished delegate from Smith, for whom I have profound respect, has said that notwithstanding what might be contained in the Constitution of this State or what may be contained in the common law of the politics of this country, that we cannot proceed in this manner without an act of the Legislature. I deny it in toto. We can proceed without an act of the Legislature, and I mean the people can proceed when I use the term 'we.' We can proceed without an act of the Legislature, and I assert it as a true doctrine and will sustain it by the highest authorities, judicial and political, that are known to the people south of Mason's and Dixon's line, that the only purpose, the only object of an act of the Legislature, is to command the officer of the Government, to have an election for the Convention and to direct the holding of the election, as the people may demand. Gentlemen say this is revolutionary power, and can only be exercised by revolution. If the powper is written in the Constitution in words that are not subject to any such discussion as that which has arisen with regard to the word 'frame,' there should be no further question about it. It is so written in the Constitution, written, I believe, originally by that very George Mason of Virginia, in that very Constitution which has been referred to by Jemison, as being revolutionary. It will be found in the bill of rights of the Government of the Republic of Texas, and also in the Constitution of 1845. The Government of the State of Texas had no power over this subject, but that power was by that Constitution recognized as being in the people, and by the declaration in that Constitution inviolable forever.

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[30] This speech was reported *verbatim* by the *State Gazette* (Austin), September 28, 1875.

"After it is so written that the people may do these things, then it is constitutional power, not revolutionary power, as has been asserted. In the written fundamental law of the State, that power is retained in the hands and control of the State. But while it is a power that rests with the people, it is said that the mode and manner of its exercise are under the control of the Government. The language of the Constitution gives authoritative contradiction to the assertion. The Constitution of the Republic of Texas and that of the State of Texas say: 'This declaration of rights is declared to be a part of the Constitution, and shall never be violated on any pretense whatever. Power is reserved to the people.' And in the second clause it is affirmed that 'all power is inherent in the people, and every government is founded upon their authority and instituted for their benefit,' and 'that they have at all times the inalienable right to alter their government.' How? In accordance with the dictation of a Legislature? No, sir, that it not the declaration, but 'to alter their government in such manner as they think proper,' and in the Constitution of 1845, 'in the mode and manner in which they think proper.' The mode is not to be prescribed by the Government, as was said by my distinguished friend from Galveston (Judge

Ballinger), on the authority of Mr. Calhoun, his authority being recognized as sufficient on this subject, but the mode which is to be adopted is to be determined by the people; they, and not the legislative department of the Government, are the judges. Then, sir, what is the object, the purpose, for which the act of the Legislature is designed? It is simply to do that which the gentleman from Smith indicated, to prevent a conflict, which might invite Federal interference, and to provide for holding the election.

"With reference to the power with which the legislative department is invested, I am very much obliged to my friend from Lamar for introducing John Randolph as an authority into this debate. The gentleman from Galveston (Judge Ballinger) referred to the Convention of 1829–1830 in Virginia as authority. What was the debate there in which John Randolph used the words which have been garbled by Mr. Jemison for his own purposes? It occurred in a debate on the Constitution of 1830, as to whether it should be submitted to the freeholders or to those who were vested with the power of voting upon that Constitution. In that convention were assembled some of the greatest lights of Virginia.

"Under the Constitution of 1776, made by a convention of the greatest of Virginia's sons, and which continued in force until superseded by that of 1830, notwithstanding the fact that Mr. Jefferson said that they had no power to make it, and it was never submitted to the people. Only freeholders could vote. The Legislature had submitted the question to the freeholders whether they would have a convention; they declared in favor of it, and the next Legislature directed the election of delegates by the freeholders, and provided that the Legislature might submit its work not only to the freeholders, but if it chose to all who might be vested with the elective franchise by the new Constitution if adopted by the people.

"The convention proposed to submit its work to all white men over 21 years old, and Mr. Randolph thereupon offered a resolution providing that the Constitution should be submitted to the freeholders alone. On this resolution he said:

" 'No gentleman who hears me will deny that the provision with respect to the right of suffrage is among the most important parts of the Constitution. Now with regard to all the other parts of it the action of the House is held to be advisory and initiatory only. On every other subject we are merely advisors; but if the construction of the act be good, which is here contended for, we are not, as respects this particular thing, advisors at all. We do not advise, we decree. Is it possible there can be anyone so obtuse as to preceive the distinction? *Decrevinus*—we have decreed. Sir, if we have the right to decree with respect to the right of suffrage, why not with respect to the apportionment of representation? I would thank any gentleman to take me out of the difficulty—or himself rather. I ask again, if we may decree with respect to this question, why not with respect to all questions? Sir, the right cannot be denied.'

"Randolph's logic is perfect and irresistible. Suffrage is the whole foundation upon which the very structure of representative government is built. If a convention may decree as to the right of suffrage, definitively, without a popular vote, then where is the limit of its power?

"On all hands in the debate it was admitted that the only power of the Legislature of Virginia was to order the officers of the State to hold an election, that it had no power to direct or control the convention when assembled. So upon Mr. Randolph's resolution, it was a naked question of power in the convention to act definitively on the right of suffrage. The resolution was defeated, the body thus affirming its power. And, sir, I have said in courts of justice more than once that of all the judges who wrote and spoke English that it was a question as to which was the greatest, John Marshall or Lord Mansfield, and I am inclined to the opinion that John Marshall was superior. As a conservative lawyer, as one who was not disposed to stretch the powers of a convention of the people or any other political body, he is almost without a peer. Yet when this question came up on Mr. Randolph's resolution after various debates in which some of the most distinguished men of Virginia, including Mr. Johnson, of Augusta, one of the greatest lawyers of that day, it decided that it was only within the power of the Legislature to see to it that provisions were made for carrying out the will of the people; that the powers of the Legislature were only mandatory on the officers of the State Government; that the power under the bill of rights resided in the people, the Legislature having only the power to initiate the action of the people, while the officers of the government were only known for the ascertainment of the will of the people.

"James M. Mason and John Y. Mason and Mr. Johnson and Mr. Thompson had all engaged in the debate, all admitting that the Legislature had no power over the subject, but that the people had. This was agreed to on all hands, some proposing to submit it to the voters who had arrived at a certain age, while others contended that it should be submitted to freeholders only. Not only did John Marshall vote in the negative on Mr. Randolph's motion, but so did James Madison, James Barbour, John Tyler, and others; so by a vote of 66 to 28 the convention decided to exercise the power of extending the suffrage definitely in advance of the adoption of the Constitution by the people. They decided that they had the power, and that they could exercise it without a vote of the people.

"So I say, that if this great Convention of 1829, filled as it was with judicial and political wisdom, for there were not only judges, but two ex-Presidents. Senators and members of Congress, the

Governor of the state, several ex-Governors, and one who afterwards became President; if they decided that they could successfully determine upon that fundamental question of suffrage, it is pretty clear that they did not think that there was any legislative restriction upon their power to do that which they thought essential to do for the common weal without submitting it to the people of Virginia.

"But, sir, it is said and represented here that the proposition is revolutionary. Now what is revolution? The ordinance presented by the majority of the committee has been analyzed by the gentleman from Smith, and he says we may have no legislative department if the ordinance is passed. Sir, the ordinance is intended to cure that defect. I say that the State should never be without a legislative department. Its powers, except when it assemblies under the law, are in abeyance, but the State should never be without a legislative department, because it can never be told when its powers may be required for the good of the State, so their terms are extended in this ordinance until there is an election under the ordinance, and all the other officers of the State are continued until their successors are elected or superseded by the establishment of a new Constitution.

"There can be no derangement in the functions of the Government, except under the happening of that contingency which cannot be provided for by any government. The gentleman from Smith inquires, 'If we should pass this ordinance and afterwards break up without making a Constitution, in what condition should we be?' I can present another case. Suppose the next Legislature is elected in December; it assembles in this building. The Governor and other State officers hold offices in this building; an earthquake comes and shakes the building down on their heads, and the whole executive and legislative departments are destroyed. The Lieutenant-Governor is in the building, and he is destroyed with it. The Senate, which might have elected an officer to fill the vacancy in the executive department, is destroyed; and thus the Government is literally annihilated, there being no one to order an election, or to call a Senate, and there is no legislative department.

"It is just as reasonable to suppose this, as it is to suppose that this body will break up without having performed its duties, or that it will be destroyed in any way. That is a contingency, in the language of my friend from Galveston, altogether imaginary, while the advantages indicated in the majority report, and to result from the passage of the ordinance, are real, and all of them will be fulfilled.

"I say, Mr. President, that while we are not the people, we are the delegates of the people; and I am reminded in saying this of what was said by my friend from Smith with regard to the question of agents. While we are not the people, we are the delegates and agents of the people, and we are here to frame a Constitution.

There is no restriction, admitting the legislative resolution to be the letter of our attorney; we are not restricted by it any further than by the construction made upon the word 'frame.' There is no direction in the resolution that we shall submit our work to the people; no directions with regard to the subject at all, for it affords us power in utmost amplitude, unless a restriction can be found in the word 'frame.' We are not called to amend the Constitution, to reform it, but called as a convention to frame a new Constitution for the State of Texas. There are no words of restriction in this, unless it be in the word 'frame,' and on that subject I am perfectly willing to leave the question where my friend from Travis (Mr. West) left it.

"It seems to me to be synonymous with the word 'constitute,' but having the power to frame a Constitution and submit to the people, I say that it is our duty and the policy of this body as agents of the people, to do those things which are incidental to the other and to perfect and accomplish all their will, and that this is the power accorded to every agent. If I am invested with the care of a man's property and unforeseen exigencies arise after it is put in my hands he had not thought of, I am authorized by my power as agent and it is within the scope of my powers and duty to do whatever is necessary to preserve it. If I am advised to accomplish certain results, all the incidents to it are implied in the letter of attorney conferring the agency. And so it is with this Convention in respect to confining its powers to framing a Constitution, or as the gentleman from Galveston insists, of forming and submitting a Constitution to the people, and that we are bound to see that they have their will in safely, freely, perfectly determining that question without impediment. It is said that the Legislature would be no impediment. It is seen from the argument of the majority report that it is an impediment, that it is in the way of accomplishing the results, that it can accomplish no good but may occasion great evil to the State. Shall we under those circumstances hesitate to exercise those powers that were given us even under that restrictive construction of the legislative resolution, hesitate to do that which is so necessary to the performance of our duties to the State and to the will of the people who delegated to us this power? My friend from Galveston stated in the course of his remarks that the only authorities we had presented—presented by the delegate from Travis—were directly in collision with the opinions of the Supreme Court of Texas with reference to the ordinance that was adopted by the Convention of 1845. In that case the court decided that it is only necessary for it to decide so far and that it is not necessary for us to do more than to see that the ordinance has the sanction of organic law, having been adopted by the Convention and ratified by the people, and the court declined to go any further. They had no business to go further, and it would have been what the lawyers call *obiter dictum* and would have been of no value. In the case alluded to, in *28th Texas,* they again decided that it is not necessary to go further. They decided in favor of the party who rested on the ordinance of the Convention, and went no further, as they ought not to have done, and decided questions not involved in the case. The decisions of the Supreme Court of North Carolina were slighted by my friend from Galveston, when, as I conceive, a proper understanding of those cases is conclusive that there were no serious restrictions on the powers of this Convention, according to the judgment of this responsible court, the court which has been the subject of eulogy on both sides of this question. These two decisions when taken together are conclusive on the question of the power to do what we propose to do in this ordinance. The judges say, after going into the reconstruction acts, that the Convention not being called by the people and not by the Constitution of North Carolina, which authorizes the calling of the same under particular circumstances—it never could have been called under the forms of the Constitution—the Convention could not have been called at all except by the President of the United States, by whom it was called. It was contended in this case that its acts were revolutionary and not valid and that the Convention itself had no power to pass an act, to adopt ordinances which fixed penalties for criminal offenses. This, I believe, was the question involved in one of the cases alluded to. What did the court say? The court goes over the whole ground and says: 'The act of the President, so far from being a usurpation, was the discharge of a duty in the mildest form, and the people of this state did accordingly avail themselves of the opportunity thus presented, and did elect delegates to the convention; *it follows that their assembly was a rightful convention of the people.*'

"Under the proclamation of the President there was no authority to pass laws, but simply to make a new Constitution for the State of North Carolina. The proclamation ordered the people to elect delegates to the convention; and the court says, 'It follows that their assembly was a rightful convention of the people.'

"In the second case, in North Carolina, decided by the same judges, so highly commended by our opponents, it is said: 'But without pursuing the argument, we do not admit that the powers of the convention were limited, except by the Constitution of the United States.'

"The two cases taken together, decided by a responsible court having jurisdiction on the subject, establish, first, that the convention called without legislative authority but sanctioned by the people is a rightful convention, and not revolutionary; and second, that its powers are limited only by the Constitution of the United States.

"So we have judicial authority for the action which the majority propose in passing this ordinance from the old conservative State of North Carolina.

"My friend from Lamar (Mr. Dohoney), said that in the ordinance we assume to be a convention of the people. If he will read the ordinances of conventions generally, he will see that this is the common form of enacting clauses, not that the people are bodily here in the House, but that they are here by their delegates. In a deed made by one holding a power of attorney, the name of the principal, not of the attorney, appears. This is in accordance with the plain maxim of law, that what a man does by another, he does by himself.

"Then, sir, we have the determination of the judicial tribunal of last resource in North Carolina, the most conservative of states, that the power which a convention has when it assembled can exercise powers that are limited only by the Constitution of the United States. But it is said that the case from Virginia, urged by my friend from Travis, were acts of legislation by a convention of Virginia, which convention established a Constitution without submitting it to a vote of the people, and which Mr. Jefferson said was not delegated with such authority, but because it had been a convention organized under a condition of affairs which prevented the ordinary course being adopted, that its acts would hold good. The Government of the King of Great Britain had been driven away, and his troops had taken refuge in their ships, and the convention was called by a meeting assembled in the old Raleigh Tavern in Williamsburg. That convention not only made a Constitution which lasted for more than fifty years, but also passed acts of legislation which the courts confirmed, as read by my friend from Travis, although said acts inflicted punishments by imprisonment and other severe penalties. My friend from Galveston gives no weight to these authorities, who were judicially and politically responsible for their opinions and action. Among them were men as careful as James Madison, men understanding the law like John Marshall, men of the highest authority; all these are deemed by my friend from Galveston as nothing, and as gravely ignored by Judge Cooley. For Judge Cooley I have great respect; for his intellect, for his attachment to constitutional principles, and for his great research, but he is but one man, and I take it that the people of the State of Texas cannot be deprived of their powers in the only way they can exercise them; of the rights which are guaranteed them in the Bill of Rights of the Constitution of 1845, and of the Constitution of 1866, by the simple irresponsible opinion of Judge Cooley. The idea that this body will gravely hesitate to exercise powers that are vested in it as delegates of the people, to do that which is essential to their welfare, because Judge Cooley, of Michigan, writes a book and says it is not regular to do it, not regular for this Convention to pass an ordinance in this way, this is simply preposterous. I take it that if there is danger of the people being deprived of their liberties, that that would be a pretty good way to do it. Will you let this irresponsible man say what are your rights, whether you will perform an act by yourself or by others, and that his word will weigh more than the decisions of the courts on this question, courts composed of the greatest men that ever lived in this country, men responsible for their action, and not expressing mere abstract opinions. I do not believe this Convention will so decide.

"It has been said by my friend from Lamar, and repeated by my friend from Smith, that these precedents were not made in times of peace. The case in point in Virginia in 1829, in which the greatest power that can be exercised at all was exercised by men like James Madison, John Marshall, and John Tyler, men who have been supposed to be devoted to liberty and constitutional government. They would not hesitate, with their high character, then shall we hesitate on Cooley's opinion, or Jemison's? Jemison, a man who actually doubts whether we can do anything but write out a Constitution and submit it to the people; who says that if a man from the outside comes in and disturbs this Convention we may arrest him, if we can do it without a breach of the peace, and turn him over to a civil officer, but otherwise not; is this the man whose opinion should control us? Why, a town meeting would have power to arrest in such a case, and yet it is gravely doubted if a convention could do it. Jemison also gravely says that we might buy ink, pen, and paper, but that we cannot go outside the members of the Convention to do anything toward defending the dignity or the powers of this body.

"The thing is absurd in itself, and as was said by the delegate from Lamar, Mr. Wright, this book was written with a purpose. I do not say to slander the people of the South, but to maintain as regular everything that was done by those who agreed with him in political opinions, and to deny everything emanating from those who differed from him. He found it perfectly regular for two or three counties to sever themselves from the grand old State of Virginia in order to make West Virginia. That was perfectly regular, and yet nineteen-twentieths of the people of that state were not represented in the convention that achieved that division, for it was held at a period when they could not be represented. I say that his opinions are utterly unworthy of any weight at all, but, as my friend from Lamar said, utterly to be despised, because, instead of being written with a judicial mind, they were written with a settled purpose, and they have about as much authority as that of a lawyer, who is writing a brief in a very bad case. Lay these opinions aside and the whole argument of the minority passes away except as it depends upon their own reasoning. I am perfectly willing to put this question where it should be, and that is to stand or fall upon the principles involved in it. We say that the people are sovereign. All agree as to that. We say, both my friend from Smith and I, that the people cannot exercise that sovereignty directly. In Athens and other cities of Greece, where there was virtually an aristocracy, the whole of the citizens could assemble in the market place, to be addressed by their orators, and to record their will. But Athens was was not much larger than Austin, and Greece was not much larger than some Texas counties.

"In that country the people could assemble and directly exercise their authority, but it is impossible in the nature of things to do so in a state like this, where we have 200,000 voters. They can only exercise their sovereign power through agencies or delegates, and when they assemble in convention they represent their sovereign power, not to injure their sovereign any more than a minister of the Czar of Russia would seek to strike down his sovereign in order to exercise the will of the sovereign in his name. That is the power this Convention possesses—to exercise the will of the sovereign in his name. Jemison decides that this is a very dangerous power. Yes, sir, it would be a dangerous power if it did not depend upon the fact that we are responsible to our sovereign for the manner in which we exercise the power that has been delegated to us, and if we adopt a Constitution and put it in force, and it should strike out any of the rights of the people, they have the power, according to the construction of our authority, to supersede us and put others in our places; or, if we have gone hence, to send others here to repair the damage we have done. I said in some part of my remarks that the disposition has always been in government to assume power and extend it by construction, and if acquiesced in, to continue to extend it by construction, and the safety of the people is in the first section of the bill of rights, which was superseded by military power in this State, because it was the helmet and defense of the people. That which stands in its place now in our present Constitution was put there for the purpose of denying to this people the rights they had received by the declaration in the Constitution of 1866, which was adopted at Washington, I believe, without submission to the people. It was to deprive them of their rights which were recognized as inherent to them by the Constitution of 1845; to deprive them of the right of dethroning men who had usurped their sovereignty. The people have, by their action in the late election, resumed their authority. It was their right; it was inherent in them: but there had been an attempt to deprive them of it, and they had never recovered it or actually attempted to exercise it until last August, and this Convention assembled here on the sixth of this month. They have resumed their authority and are now in the exercise of it. I would not involve this Convention or the people of

Texas in anything which would bring them into conflict with the United States. We know the Constitution, and we can so conform our work to it that there can be no conflict with the Government of the United States or its statutory authorities or the Constitution of the United States. We are not here to assert any authority as to this people that has passed away from this people, either under the original Government of the United States or since, but are here within the limits of the Constitution of the United States, to remove from the shoulders of this people that which has so much oppressed them. We propose to do this in the safest and surest mode, and not to allow the organization of a force hostile in interest to our work.

"In order that this shall be done, it is essential to preserve harmony on all that we are called upon to execute. It is said that the Legislature cannot meet in January if we pass this ordinance. It is not necessary that it should. The appropriation bills were all passed at the last session and will extend until the last day of August. There is no necessity for greasing the wheels of the Government; the courts are in operation and the judges are paid. The executive department is in operation, and the officers paid by the appropriations made this year. There is no use on earth for the Legislature to meet in January except for private legislation. Then why should they assemble? It would cost a considerable sum if they merely met and adjourned. Their mileage last session was between fifteen and twenty thousand dollars. It will cost at least a few days' pay and their mileage, and who can say what they might not do if they once assemble? I distrust the body no more than I do other such bodies, but none can tell what the expense may be, and we should have to go through the formula of an election of ten Senators for six years. There are holding over ten for four years and ten for two, and we elect ninety members of the House for two years. These would be incited to the extent of their ambition and the pay there is in it, except so far as their chances might be good under the new Constitution for reëlection and, to the extent of their ambition and their fears of disappointment, would engage in organizing their friends against the adoption of the new Constitution. What more? We elect officers for the county for four years and they too become an organized electioneering force against the Constitution. Do the people want the Constitution? If they do and we fall short in this manner we shall awaken that most effective electioneering force—the whole government—against it. I was in the states of Pennsylvania and New York pending the last presidential election, and it was nothing but the electioneering power of the officers of the Government of the United States that beat Greeley for President. They all had their orders and were very willing to obey them. These had their friends and they tried very hard to induce others to vote on their side, and not only that, but they made great efforts to induce others to vote on their side who were not entitled to vote at all. But no opposition on the authority of Judge Cooley, which is the only authority except Jemison's, will influence me, and I venture to say that the House thinks far more of the opinions of any friends who oppose us in this matter, for we know that the motives that influence them are true and pure. They act in accordance with what they conceive to be their duty and upon their responsibility as delegates and their opinions influence us a thousand times more than those they have cited, which are mere abstract opinions. But I set in opposition to their opinions the opinion of the judges of North Carolina in very much the language of the last convention in Pennsylvania, that convinces me they are in error. The Pennsylvania Convention was not organized in a state of war, in a state of profound peace, where judges are eulogized because of the conservatism of the state, for it is a very conservative people. The people of Pennsylvania I regard as the most conservative of all the states of the North. In that convention the issue was first made upon legislation which prohibited any alteration of the bill of rights, that this should stand just as it had been, without any alteration whatsoever. It came up on a proposition to create a committee on a bill of rights, and it was created by a very large favorable vote. I mention as one who voted in favor of it, William M. Meredith. He died during the session of the convention. He was an old Whig, an old lawyer, second only to Horace Binney in his great reputation as a lawyer and a conservative statesman. He utterly denied by his vote, while president of the convention, the power of the Legislature to put limits upon the convention.

"The convention acted in defiance of the legislative resolution, and did amend the bill of rights; Mr. Meredith voted that notwithstanding the restrictions placed by the Legislature on the convention, that they had the power to act on the bill of rights, though it changed and altered it, cut out the first section, and altered it in other respects. The restriction was made through the courts, as referred to by my friend from Galveston. When the Constitution had been adopted by them, when there was no longer anything to be accomplished except to establish a principle, they submitted the question to a committee, and they reported unanimously, with one exception, in recognition of the principle that the convention had power over the bill of rights, despite the restrictions sought to be placed upon it. I will read only just so far as concerns authority of the people. I will read only the second resolution:

" '2. *Resolved*, that the Constitution of the State is the only recognized form of its government, and the people having expressly reserved to themselves the right to alter, reform, or abolish their government in such manner as they think proper, and having in distinct terms excepted this right out of the general powers of government, and declared that such right shall ever remain inviolate, this Convention deems it to be its duty to declare that it is not in the power of any department of the existing government to limit or control the powers of a convention called by the people to reform their Constitution; and that the convention, subject only to the Constitution of the United States, is answerable only to the people from whom it derived its power.'

"This is the same doctrine announced by the judges of North Carolina. The report of the committee in the Pennsylvania case was adopted by a vote of 66 to 13 and supported by the whole body of the convention, only a few members voting against it and they because it was useless to adopt it, the labors of the convention having been completed. So we have the precedents both of law and and politics and in view of the exigencies of the circumstances before us, our duty to this people to relieve them of that odious Constitution which has cut out of the bill of rights the principle for which we contend, is plain. In view of the fact that the will of the people should be fully and fairly expressed without impediment of any kind, it appears to us, that both in law and politics we are safe in passing this ordinance recommended by the majority of the committee. But my friend from Galveston, when asked the question as to the authority on the Constitution for the Legislature to call a convention, asserted that the authority was vested in the Legislature under its general power. Well, I say, on this subject, that their power is restricted and that they had no power to do more than the distinguished men from Virginia said they had a right to do, direct the officers of the government to register the people's will. But it has been decided by the Supreme Court of this State—and there are other precedents—that where the Constitution expresses the mode in which a thing may be done by the Legislature, it may pursue that mode and no other. So it was in the tax cases. The Constitution allowed a proceeding *in rem;* no other could be used in collecting the land tax.

"So when we talk about the meaning of the Constitution vesting authority in the Legislature, we say that there was a way provided by the Legislature, plain in every respect, and that was by proposing amendments to the Constitution. They did propose some amendments, but they did not propose the amendments the people required and they demanded that they direct their officers to put the machinery in operation by which their sovereign will might be exercised. So I say there can be no doubt, in view of the fact that we, as the delegates of the people, are restrained only by the Constitution of the United States in exercising the will of the people. And our responsibility to our sovereign is direct. I have given considerable attention to the subject, and have been impressed by the researches of the gentleman from Travis, that in all those researches he has found no authority to show that we are not able to pass this ordinance, and I am persuaded that there is no danger of a collision with the Government of the State. As was well said by the gentleman from Anderson (Judge Reagan), this question of a constitutional convention was voted on in the election that elected Richard Coke. It was a principle for which he contended in the platform of principles on which he stood, together with his solid worth and honest defense of those principles, that caused his majority of 50,000. It was the demand of the people that a convention of the people should reform and remodel their Constitution. It was a decree of the people to the Legislature that they should arrange for a convention, and the Legislature had only the right to hold that matter in abeyance for reasons which were of the most imperative character. My judgment was then—though I was told that it was because I did not understand the situation—that as soon as the government was in the hands of the officers we had elected, that it was their duty, and within the scope of their power of attorney, for the Legislature to move in the matter, so that the people might have again and without delay have resumed their sovereignty, which is their inheritance, and which it is not within the power of any government existing through them to deprive them of. We are in no dread, at all events, as to the course of Richard Coke, who is still a patriot, and owns his fealty to that sovereign power. He will make no discord in consequence of our act. As to the judiciary itself, there is no fear to be had from that quarter. My friend, the gentleman from Travis, delivered the well considered declarations of the Chief Justice on this subject, and he would be well supported by these authorities, and under these we have the power to suspend the election, and when suspended under this ordinance, it is good. The idea that a sheriff shall set himself up as an authority against this Convention, and expect such tribunals as we now have to sustain his power is absurd. There will be very few who will try it, I apprehend. And if they choose to create disturbance, let them do it. There is power enough in the organization of the government to proceed without a sheriff, if he cuts up about going out of office six months later than he would go out in any event, and so it is with all other officers who may come under this description. The argument of the committee was logical. It was of no use to consult questions of expediency until we decided the question of power. We came to the conclusion in the committee that we had the power, as you have heard from my friend from Travis and the other gentlemen who have spoken for the majority report, and I believe there are very few of the members of the Convention who doubt its expediency."

## SEVENTEENTH DAY

### FRIDAY, SEPTEMBER 24, 1875[31]

MR. FLOURNOY reminded the Convention that, under the head of unfinished business, the question of the adoption of the majority report on the postponement of the election should come up. He said he would not make a speech, and moved the previous question.

MR. BROWN requested that Mr. Flournoy withdraw his motion, as he wished to have an opportunity of explaining his position as a member of the majority reporting the resolution. This was agreed to, provided Mr. Brown would move the previous question when he had finished his remarks.

Mr. Brown said:[32] "Mr. President, with close attention I listened all of yesterday and last night to the able gentlemen who spoke for and against the pending ordinance, and accord to each of them the same sincerity of conviction that I claim for myself. Being substantially the author of the proposed measure, the Convention will allow me the privilege of a few remarks in defense of my own offspring. I take the occasion to say that the question is not new to me, for in my deep anxiety to relieve the people of every needless burden, and restore among them feelings of confidnce, harmony, and peace; to reawaken in their hearts once more the ancient feelings of love of country and patriotism, I have studied the question very carefully. I thoroughly examined the subject in May last, and in my humble home in Dallas drew the ordinance as it now is substantially, the only difference being the matters inserted by the committee in relation to United States Senator and the prolongation of the terms of the existing officials of the Legislature, to prevent any jar or hiatus in the law-making power of the Government.

"Now, sir, from some of the speeches of the gentlemen in opposition, one would imagine that this is a terrible revolutionary movement. They would have people believe that we are invoking the wrath of some evil power, destined to burst into atomless fragments the snow-capped Himalayas and spread them over the burning plains of Hindoostan; or to wrest from its eternal base the Andes, and pile it in wild confusion over the pampas of South America.

"Mr. President, we propose no such war on God's eternal power. We do not even desire to disturb the peaceful flow of the Father of

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[31] The proceedings for this day were taken from the *State Gazette* (Austin), September 25, 1875.

[32] Mr. Brown's speech was reported in full by the *Dallas Herald* of October 12, 1875.

Waters in its course to the sea; nay, we would not cause a ripple in the smiling waters of the limpid Colorado, at the base of the hill on which we stand.

"But, sir, we do propose, by the adoption of this ordinance to relieve the people of Texas of a great and unnecessary annoyance, a great and unnecessary confusion, and a great and unnecessary expense. We propose to do so peaceably and wisely. We act under the conviction, deep-seated in our hearts, that the people of Texas, though bedeviled for ten years past, are not fools, but men of fair intelligence and a reasonable share of common sense; that they are men who, though not learned in the technicalities of the law and the rules of rhetorical construction, are brimfull of that practical judgment and keen sagacity which readily discriminates between measures revolutionary and measures peaceable, practical, and beneficent for their own protection against useless, cumbersome, and expensive requirements.

"Mr. President, after all the learned discussion in opposition, which has been logically answered by Messrs. West, Stockdale, Reagan, and Flournoy, let us strip the whole question of all its sophistry, and see what is involved. What is the object sought? I answer, to relieve the people of a great and useless expense and vexation. By what means do we propose to accomplish so desirable an end? I answer, by the straightforward dictation of our cool common sense, in the simplest manner possible, and by the only means at our own control. We propose to do it by simply changing *the day* of a future election, from the first Tuesday in December next, to a day to be determined by the Governor, in a certain contingency, after the happening of another event. That is to say, if the people reject our new Constitution, then the Governor will say to the people, 'you must elect the Fifteenth Legislature on such a day, and that body must assemble on such another day, as if it had been elected in December.' That is all of it, twist, turn, screen, and distort the subject as gentlemen may. It involves no interference with the execution of the laws of the regular administration of the Government. All legislative appropriations are already made to August 31, 1876, and there is abundant time, under the ordinance if necessary or under the new Constitution as we all anticipate, to assemble the Fifteenth Legislature, whether under the old or the new Constitution, before that time. Can anything be more plain, more just, or more wise?

"Sir, learning is a great thing, and none more than myself pays homage to its possessor. But there are different kinds of learning. Some of it is altogether of the closet; some is altogether attained by rough contact with men; and another is made up of both, and is, by the highest test of time, the best of all. It is that kind that I, in an humble degree, claim. It illustrates and pertains to that middle class of men, thoughtful, practical, prudent, and well-poised, who are the pillars of the State and the conservators of public and private liberty in times like these. It embraces men who are the same whether resting under palms on the burning desert, or robed in furs on the peaks of everlasting ice and snow, whether in the huts of the humble or in the parlors of the rich. Such, Mr. President, are the members of this body who seek, by this ordinance, to save the people of Texas of their nonsensical expense and annoyance.

"Sir, gentlemen say this is revolutionary. In the name of 1,500,000 people of Texas, I deny it. If our people were lawless, reckless, and ignorant, there might be some ground for apprehension. But they are neither. Yet, sir, they are tired, disgusted, and outraged with the registrations, elections, and tyrannies of the last seven years. They want once more to enjoy the privileges of their fathers in going to the polls by virtue alone of their inherited rights as free men.

"We want no more espionage or registration forever. Registration has been the damning cesspool of corruption among officials and the generator of hate among our best farmers, mechanics, and all other classes. Away with it forever! My soul shrinks from its pollutions as virtue shrinks from seething vice. We intend to free the people from all these shackles, and when our Constitution and a new election shall be submitted, we want to enjoy the blissful pleasure of saying to them: 'Fellow,citizens, all impediments to liberty have been overcome! Rally to the polls as your fathers of old, and vote as free men without any pass or certificate, but simply on the ground that you are free men, citizens of the United States, twelve months in the State and six months in the county. If entitled, no man shall impede your right; but if any man not entitled shall corruptly exercise the right, he shall be subject to the pain and penalties of perjury.'

"No, sir, we are not revolutionists, but conservators of the people's rights. This is a measure of peace and of reform, of conciliation, leading to a restoration of confidence and good fellowship. Pass it, and, despite the hasty and inconsiderate cries of a few already heard, a shout of joy and relief will soon be heard from the great thinking mass of the people. Bound with hooks of steel from boyhood to the glory of Texas, I have no fears. Pass it, and all will be well."

MR. JOHNSON, of Franklin, spoke next in favor of the majority report and resolution. He said the Convention possessed all power. They could not only make a new Constitution, but could also remove all obstacles in the way of its consummation. The Legislature could neither grant to nor withhold any power from the Convention. The Legislature might have said what the Convention could do or not do, still the power of the Convention would have been the same. Conventions were above legislatures, governors, and other authorities. They would all remember the dark days in which the Radicals got possession of the State, and made the existing Constitution; how under that same infamous Constitution these same men had run riot over the people; and to cap the climax, after the democracy had, under the leadership of the lion-hearted and gallant Coke, defeated them throughout the length and breadth of the State. The Radicals had attempted to throttle the voice of the people by an attempt to drive the legally elected officials from the thresholds of the Capitol. He thought it was not only their duty to get rid of so obnoxious a Constitution, but to remove every obstruction which dared to interpose its onward and beneficent progress.[33]

MR. FLOURNOY stated that he had once moved the previous question, and had given way to the gentleman from Dallas (Mr. Brown) only with the understanding that it would be renewed as soon as he had finished speaking. He said he would like to have spoken also, but believing that the public good would be subserved by coming to a vote, he had waived his personal predilections in the matter.

MR. BROWN explained that he had forgotten the matter of the previous question. He regretted very much that he had overlooked his promise to the gentleman from Galveston.

GENEREAL WHITFIELD now moved the previous question, and the main question was ordered.

The question then being on the adoption of the majority report, would be the passage of the ordinance postponing the election, it was adopted by a vote of 56 to 25.[34]

The Convention next went into the committee of the whole on the report of the Committee on Legislative Department, with Mr. Stockdale in the chair.

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[33] This brief summary of Mr. Johnson's speech was found in the *Austin Statesman* of September 25, 1875.

[34] All of the majority were Democrats. Eleven of that party voted with the solid Republican vote of fourteen against passage. This unconstitutional and extra-legal action of the Convention was applauded by almost all of the press, on the ground of expediency and economy.

## EIGHTEENTH DAY

### SATURDAY, SEPTEMBER 25, 1875[35]

(The eighteenth day of the Convention was consumed by the introduction of resolutions, which were referred to their appropriate committees.)

## NINETEENTH DAY

### MONDAY, SEPTEMBER 27, 1875[36]

MR. FLOURNOY moved that thereafter the Convention should hold two sessions a day, at 9 A.M. and at 2:30 P.M., respectively.

JUDGE REAGAN said that if the motion passed the committees would have to work at night.

MR. FLOURNOY said that all the standing committees would soon be ready to report. They had occupied two entire days in four sections of the legislative department report.

The resolution was adopted.

### *The Legislative Department*

This subject came up as unfinished business.

MR. RUSSELL, of Wood, was dissatisfied with the mode of discussion in the Committee of the Whole, and upon his motion the question of the legislative department was brought out of the committee of the whole and into the Convention.

MR. DEMORSE offered an amendment to Section 2, providing that after each apportionment the terms of all Senators previously elected should expire. Mr. West said the effect of the amendment would be to leave the Senate out and the House in, and then suggested this phraseology, "and that after each reapportionment there shall be a general election for Senators and Representatives," and his amendment to the amendment was adopted. The DeMorse amendment was then adopted.

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[35] The proceedings for this day were taken from the *State Gazette* (Austin), September 26, 1875.

[36] The proceedings for this day were taken from the *State Gazette* (Austin), September 28, 1875.

GENERAL WHITFIELD moved to strike out "four years" in the term of Senators in Section 3, and to insert "two years." He saw no reason why their term should be longer than that of the popular branch, the House of Representatives. He moved to strike out the balance of the section which referred to the classification of Senators.

MR. MCCORMICK supported the Whitfield amendment, but upon the motion of Mr. Mills it was tabled.

After some further discussion the section was passed over.

MR. MCCORMICK proposed quadrennial instead of biennial sessions of the Legislature for Section 5 of the article.

MR. P. R. SCOTT, of Cass, said that by the clause then offered the terms of members would expire two years before they were elected, as the fourth section provided that they should hold their office "two years from the date of their election."

MR. MCCORMICK thought they might be elected but not convened unless the public necessity required it.

His amendment was defeated.

MR. RUSSELL, of Harrison, moved to insert "April 1st" on the blank in the section when the Legislature should convene; but upon the motion of Mr. Flournoy the section was passed over.

MR. DEMORSE moved to add after Section 5 as an additional section, an oath to be taken by members of the Legislature to this effect:

> "And I have not since my election received, and will not during the continuance of my term of office receive, any free ticket, gift, accommodation or compensation from any railroad or other corporate company,. other than shall be extended to citizens of the State generally; nor any unusual accommodation or compensation from any private individual."

After considerable discussion, Mr. Mills moved to add to the oath, by amendment, "or use a free pass, or try to borrow one," which was adopted.

The DeMorse amendment was lost by a vote of 36 to 41.

Section 6 brought out some discussion.

GENERAL WHITFIELD made an eloquent plea for the young men of the Senate. He moved to make a two years' residence sufficient instead of five, as reported in the resolution for eligibility to the

Senate, and to reduce the age at which they might be elected from thirty years to the age at which they became qualified voters.

JUDGE REAGAN was opposed to so great a reduction, but said he was willing to meet them in a compromise providing for about half of the reduction in the age requirement.

MR. SCOTT offered as a substitute that any person who had lived in the State five years, and in his district one year, and had attained the age of 21 years, should be eligible for the office of Representative or Senator.

The substitute was lost by a vote of 21 to 59.

GENERAL WHITFIELD moved to strike out the word "thirty" and insert the word "twenty-four" in the section providing for the age requirement for State Senators."

JUDGE REAGAN spoke in favor of an age qualification of twenty-five years for Senators.

General Whitfield's substitute was lost by a vote of 34 yeas and 47 nays.

MR. NUNN said he was in favor of no one being a Senator until he had attained the age of thirty years.

COLONEL CRAWFORD urged that no restrictions should be placed upon Senators as to their age qualification.

MR. C. B. KILGORE, of Gregg, offered as a substitute that the age qualification for Senators should be made twenty-six years, and in that form the section was finally adopted by a vote of 44 to 34.

MR. MARTIN, of Navarro, moved to strike out the word "five," in regard to length of residence, and insert "three." His motion was adopted.

MR. COOK, of Gonzales, offered an amendment which would have stricken out the office of Lieutenant-Governor.

MR. RUSSELL, of Wood, spoke favorably toward the amendment, basing his argument on the need for retrenchment and reform.

MR. MOORE said the Committee on Executive Department had in preparation a report on that very subject, and asked for a postponement of the question.

JUDGE BALLINGER favored the election of a Lieutenant-Governor.

MR. MURPHY favored the amendment on the ground of the need of retrenchment. He thought the office of Lieutenant-Governor was a useless expenditure.

The ayes and nays were demanded, and the amendment was lost by a vote of 36 to 43.

JUDGE REAGAN offered an amendment to the twenty-fourth section, in regard to pay of members of the Legislature, that the members of the Legislature should receive, after the first session a sum not exceeding $6 a day. This would have increased the pay of the Sixteenth and succeeding Legislatures from $5 to $6 a day.

MR. JOHNSON, of Collin, said that if $5 a day was not enough for members they should stay at home.

MR. FLEMING moved to lay the Reagan amendment on the table, and the motion was adopted.

The report of the committee provided for separate districts for Senators and Representatives.[37] Mr. McCormick moved to strike out those sections and insert, "The State shall be divided into senatorial districts of contiguous compact territory, according to the number of inhabitants, and each district shall be entitled to elect one Senator and three Representatives."[38] He appealed to the delegates who had large Democratic majorities to remember the citizens of his county, who had so long and so patiently suffered under wrong and oppression.

JUDGE REAGAN followed with an appeal for the section of the State just referred to and all others similarly situated. He said those poor down-trodden people were turning with anxious eyes to the Convention for relief. He appealed to the delegates to save them and give them representative government. Judge Reagan said that it was very distasteful to him to have to discuss the subject, but that it must be evident to all the delegates that a large portion of their countrymen were incapable of self-government. On general principles he favored local option, but the situation in the eastern counties of Texas was peculiar. There were twenty or more counties in the same condition as that described by Mr. McCormick, who had borne and suffered for Democratic principles. If the Convention did not help the people of those counties they would be compelled to remove with their families, or be tempted to coalesce with the Radicals. For the sake of humanity and the right of self-government he hoped the substitute would be adopted.

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[37] The Constitution of 1869 provided that each senatorial district should elect three representatives, to the Legislature.

[38] The Republicans in 1869 had gerrymandered the districts in favor of their party. Mr. McCormick proposed to do the same thing, but would favor the Democratic Party in the redistricting of the State.

MR. COOK thought that the substitute sections ought to be adopted. He endorsed everything Judge Reagan had said, and was in sympathy with those suffering people in East Texas.

MR. MARTIN, of Navarro, said it was a very important question, one which would require considerable time and thought to settle. Upon his motion the Convention was adjourned until the next morning.

## TWENTIETH DAY

### TUESDAY, SEPTEMBER 28, 1875[39]

### *The Legislative Article*

MR. BROWN opposed the McCormick substitute. He was in favor of returning to the old system of 1845. He represented the district giving the largest majority in the State, but his people favored a non-partisan Constitution, in favor of district and not local representation, which had occasioned so much trouble in the past. Should they now, because they had the majority, go back on the doctrine they had always taught? He said he would go as far as anybody to relieve the afflicted sections, as far as his conscience as a man would allow him, but he was responsible not only to his constituents but also to God for his actions in the Convention, and there was a point beyond which he could not, and would not go.

MR. GAITHER moved to postpone further consideration of the section until after the Apportionment Committee had reported.

MR. MCCORMICK said that was agreeable to him. He said the gentleman from Dallas had talked so loud and growled so much that he could not understand him, but he believed he was on his side. Further consideration was postponed.

MR. FLOURNOY presented a resolution providing that it should require nine members to demand the yeas and nays instead of three, as formerly.

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[39] The proceedings for this day were taken from the *State Gazette* (Austin), September 29, 1875.

MR. MILLS said the rule would be an arbitrary one, enforced to throttle the minority of Republicans on the floor. He asked Democrats to have some regard for the political minority. He thought that if members were afraid of the yeas and nays they must be afraid to have their records go before the people. He was not afraid of his record, and thought that no one who was trying to do right ought to be afraid of his record.

MR. FLOURNOY said he had as much respect for minorities as any one, and was not afraid of his record. He had only desired to prevent the encumbrance of the records by two or three of the opposition.

THE PRESIDENT said it would require a suspension of the rules to consider the resolution, and it would require a two-thirds vote to carry it.

MR. McCORMICK moved to suspend the rules.

The motion to suspend the rules was lost by a vote of 46 yeas to 37 nays—it requiring a two-thirds vote.

## TWENTY-FIRST DAY

### WEDNESDAY, SEPTEMBER 29, 1875[40]

MR. DOHONEY introduced a resolution providing that President Pickett appoint a committee of seven with instructions to inquire into the extent of the depredations on the frontier and the causes thereof, to correspond with the commander of the United States forces on the frontier and citizens, to prepare and present a memorial to Congress, urging that proper means be adopted for frontier protection; also that the Texas Senators and Congressmen lay the whole matter before the President, Secretary of War, and Congress, and demand protection for the future and reimbursement for past losses; also that a copy of the memorial be furnished the Texas Senators and Congressmen and the Major-General commanding the United States forces in the district embracing the Texas frontier.

MR. DOHONEY said the resolution might either be adopted at once or referred to the Committee on Federal Relations. He had conversed with several gentlemen on the question, among them the gentleman from Cameron (Colonel Ford) and Mr. Flournoy, and also with one of the United States Senators from Texas, who had given the matter the fullest consideration. He did not desire to be made the chairman of the committee, and hoped Mr. Flournoy would be selected for that position.

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[40] The proceedings for this day were taken from the *State Gazette* (Austin), September 30, 1875.

COLONEL FORD said the resolution met with the entire approval of Senator Maxey, and he believed it was a course of action which would lead to the entire protection of the frontier along the Rio Grande. The matter had so often been before the public that he was sure all the delegates knew the facts in the case, and hence it would be useless for him to repeat them.

Mr. Dohoney's resolution was adopted.

### *The Legislative Article*

Consideration of this article was resumed.

Section 41 was before the Convention. Mr. Flournoy moved to strike out the clause "and give notice thereof by proclamation," the object being to relieve the Governor of the necessity of publishing his proclamation of his refusal to sign bills which he had disapproved, after the adjournment of the Legislature.

MR. FLOURNOY said that though the amount saved would be small he thought it was worth saving. His amendment was adopted by a vote of 39 to 26.

Section 48 of the proposed article indicated the purposes for which the Legislature might levy taxes, one of the objects being, "the support of the public schools." Mr. Robertson moved to amend the section by adding "so that the support of the public schools shall not exceed 20 per cent of the whole revenue."

MR. WRIGHT explained that the Committee on Revenue had that matter under consideration, and he thought it would be well to await its report.

MR. RUSSELL, of Wood, was of the same opinion, but when the question was properly before the House he proposed to inquire whether the people should be taxed for educational purposes. He had been combating that idea for twenty years, and expected to do it as long as he lived.

Mr. Robertson thought the present was the proper time to take the sense of the House, but since it was so desired he had no objection to withdrawing his amendment.

Mr. Sansom moved to strike out "for the support of the public schools," thus relieving the State of any obligation to aid financially the public schools. He supported his amendment with a long speech.[41]

Mr. Sansom said: "Mr. President, I thank the committee for defining and expressly limiting the uses for which taxes may be levied by the State. Their action in this respect meets precisely the views I have long entertained on the subject of limitations on the exercise of this power. I regret only that they have seen fit to put public free schools in the enumeration of uses. And yet, in view of what is deemed the public sentiment of the age on this subject, I should have been surprised (agreeably so, however) if they had done otherwise. And now, sir, if the Committee on the Bill of Rights will clearly define and enumerate the public duties which citizens owe the State, and the Convention will adopt their work, it will have performed the great duties devolved upon it and met fully the requirements of the times.

"The power to tax for the support of the public free schools implies the power to control the children of the State for educational purposes; for it is obvious that the State cannot educate the children if it has not the power to compel their attendance at the schools. While I have given this subject much reflection, it has not been in my power to give to my views upon it that methodical arrangement necessary to their clear or full expression; and this I regret, sir, for no one is more fully convinced than I am of the importance of coherence of ideas and perspicuity of style in the treatment of the most ordinary topic; but when a man rises in a body like this to discuss a question in the light of its relation to those great principles which underlie the very structure of government, the importance of these requisites becomes transcendent. If I regarded this subject as involving only a question of expediency I would be less thoughtful about my mode of treating it; or if the views which I entertain of the *rights* of republican state governments to control public education were of a piece with those commonly held by the writers and speakers of the day, I could very well afford to pretermit either deliberation in its investigation or method in its discussion. But, while I firmly believe that my opinions are in harmony with the public sentiment of this State, I know they are at war with the carefully prepared and elaborately expressed opinions of some of the greatest writers and speakers of the age in our own country, and hence I hope I will be pardoned if I desired to place them before the Convention with sufficient clearness to avoid unintentional misconstruction. As for that class of men who make it a business wilfully to distort the opinions of those who do not follow in the beaten track, from which they, in their littleness, do not dare depart, I expect from them nothing else than wilfull misrepresentation and detraction. I am not ignorant of the fact, sir, that, an humble citizen, just from the walks of private life, I subject myself to the charge of acting with temerity in attacking an idea which is regarded as one of the most precious crown jewels in the diadem of that class of thinkers who are the self-constituted leaders of the civilization party of the age; and that, too, when I know them to be backed by hoary precedents and high authorities—even as high as the great Chancellor Kent. But hedged in, as I am, by these embarrassing considerations, I should deem myself unworthy of the position I occupy and recreant to the trust imposed in me by the people whom I have the honor, in part, to represent on this floor if I should shrink in the treatment of this subject from following the finger-pointing of my own soul.

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[41] Mr. Sansom was from Williamson County. He was one of the three delegates from the district which included Austin. His speech is taken from the *Austin Statesman* of October 10, 1875.

"Intrinsically considered, this subject has no importance, for if the question of the power of a state government to exercise exclusive control over the education of the youth of the State was presented for the first time in this House today, the State Constitution being silent upon it, I do not hesitate to say that I believe there could not be found a dozen members of this Convention who would affirm their belief in the existence of such power in the State. Its importance grows out of its relations to the history, both civil and judicial, of the states forming the American Union. The power has time and again been exercised by the State Legislatures, and its legitimacy has been affirmed by the courts and law writers of the country, and hence its importance.

"We are here, sir, as the delegates of the people of Texas, having committed to our custody their sovereign and inherent powers, charged with the duty—the highest which could be devolved upon us—of framing a state government adapted to their conditions and wants; with the power to invest the different departments of the new government with the exercise of such of these sovereign powers as may be deemed best; to limit the State in the exercise of such powers as may be dangerous to the liberties of the people, and to forbid expressly the exercise of any power which we deem to be subversive to the purposes for which republican government is established. And now it remains to be seen whether the patriotism and intelligence of this body are adequate to the great undertaking of framing a government amply provided with power to afford protection to life, liberty, and property, and yet totally devoid of power to encroach upon the domain of either individual right or private duty.

"Until within the last fourteen years, so free were our governments, so light the burdens they imposed upon us, and so patriotic the incumbents of offices, that thoughtful citizens were not startled by the comparatively few encroachments of the government upon the reserved rights of the people, especially as the temptations to exercise doubtful powers were always in a line with what public opinion, as expressed through the newspapers of the country, regarded as essential to the general welfare—how comprehensive this term and how many acts of despotism have been perpetrated in its name—as for instance the construction of those great articles of commerce, railroads, and the diffusion of general intelligence through systems of public schools.

"But the impetus given to centripetal forces of government by the late Civil War has caused them to whirl around with such incredible velocity as to make the heads of thoughtful men swim, in fact no man not drunk with passion could look upon their movements without becoming dizzy. And now the same thoughful citizens are turning away from this sickening spectacle to the broad, calm fields of reflection in which lie the first great principles of government, and, inspired with the patriotism of the fathers, ripened by the experiences of the past, are addressing themselves earnestly to the task of building up structures of government, in which the bills of rights, the great foundation stones of constitutions, are being more broadly and deeply laid than ever heretofore.

"I am not surprised when I remember how lightly the burdens of government lay upon our shoulders prior to the late war, that the intrinsic importance of education, when considered in connection with the responsibilities incident to citizenship in these American states, should have tempted many of our legislative bodies without due reflection to invade, in this direction, the domain of private duty. But I firmly believe, sir, that the power to control the education of the children and youth of the State is one, the exercise of which should be inhibited. Hence I have offered this amendment, and will vote for it for the following reasons:

"A system of public free schools to be supported by taxation is not adapted to the condition or wants of the people of Texas. The State is barely thirty years old, and its first settlement by English-speaking people dates back only a little over fifty years. Its present condition is like that of a young man with small capital just entering upon the business of life, with broad but undeveloped fields of enterprise stretching into the distance on every side. With an area of 274,365 square miles, its population in 1870 was but little over eight hundred thousand, less than three human beings to the square mile. Now, sir, let us assume for the sake of argument, that the population has increased 50 per cent in the half of the present decade now reached, and it will give us a population, at this time, of 1,227,868, and our density of population will still not reach five to the square mile of territory. Such is the condition of Texas as respects its population and territory. And now, sir, as our condition can be more clearly understood by a comparison with that of some of the older and more densely populated states of the Union, I will turn to the State of Massachusetts and ascertain its condition in these respects. The area of that state is 7,800 square miles. Run these figures through those indicating the area of Texas, and you will find that this child-state might be divided into thirty-five states, giving to each the area of Massachusetts, and still have a surplus of territory sufficient to make another state almost the size of Connecticut. Let us now turn to the table of population and we find that in 1870 the population of Massachusetts was 1,457,351. Run these figures indicating area through those indicating population, and it gives to that state a density of population equal to one hundred and eighty-six and a fraction to the square mile in 1870. So much for area and density of population. Now let us compare the wealth of these two states. Referring again, sir, to the tables of statistics compiled under the authority of the general Government, we find that the wealth of Texas in 1870 was estimated at a little over one hundred and fifty millions of dollars, while the wealth of Massachusetts reached the sum of two billions, one hundred and thirty-two millions, and some hundreds of thousands, giving to that state an average wealth of fourteen hundred and sixty-three dollars per capita to its entire population. While the wealth of Texas, divided among its population, gave to each one less than two hundred dollars per capita, less by far than the average wealth of any other state in the Union. And I will take occasion here to call attention to the fact that there are some elements entering into the estimates of the wealth of a state which do not properly belong there, for the reason that no state is as rich as it appears to be from the estimates as made. To ascertain, for instance, the actual wealth of Texas, we would have to deduct from the estimates now made all the debts due by citizens of this State to persons or corporations out of the State on the first of last January. Then, sir, there are a class of debts owed within the State, the values of which are represented twice or oftener in these estimates. Thus A lends B $1,000; the money is invested by B in land, the note held by A, being money at interest, is assessed, and the land purchased with the money is also assessed. Thus we have $2,000 appearing on the assessment rolls and entering as an element in the estimate of the wealth of the State, when both the note in the hands of A and the land owned by B represent only $1,000. And there are many cases, no doubt, under the present Constitution, which forbids the passage of laws regulating the interest on money, where money is borrowed at 10 or 12 per cent per annum and loaned by the party paying this light interest to others who pay 2 or 3 per cent per month, and is invested in land or improvements, in all of which cases the same money appears three times in the taxable values of the State. There may be states careful enough to collect statistics of these classes of indebtedness, and, before making estimates for expenditures, deduct them from the apparent wealth of the state, but I have never seen such tables. But so far we have only taken the wealth of Texas in 1870 and compared it with that of Massachusetts at the same date. Now let us bring up the estimated wealth of Texas to the present time and distribute among our present population, and it will give as our average wealth a little over two hundred and twenty dollars per capita to our population.

"Now, sir, the capacity of a people to endure heavy taxation is not to be determined altogether by their wealth, but other considerations must enter into the calculation, one only of which I need mention here. That is the productiveness of their wealth. If the taxable property of the people of Texas was invested in such a way as to yield to the owners a large annual profit, they could certainly pay higher taxes without experiencing oppression, than they can if their income is small. Here again, sir, with little statistical information to guide me, I am compelled to go into this field of inquiry, relying upon the observation and experience of the members of the Convention to bear me out in my conclusions. The amount of income derived by the people of Texas from the investment of their property cannot be obtained from the annual increase of taxable values as is shown by the rolls of assessment, for the obvious reason that no inconsiderable part of the increase represents the property brought here by immigrants or foreign capital invested here during the year. But we can make an approximate estimate of the actual increase from investments by looking to the pursuits of our people, by finding out the pursuits of the bulk of the population we readily determine the character of the investment of the bulk of their capital, and then we may readily turn to reason and experience to aid us in coming to a fair estimate of the profits on their investments. By far the greater part of our population are engaged in agricultural pursuits. By far the greater part of our capital is invested in lands, improvements upon lands, farm stock, and agricultural implements—in short, the appliances of agriculture. Now, how much annual profit does this investment yield? Does it pay 5 per cent per annum? I do not believe it does, and I appeal to the observation and experience of those members who are, or have been, farmers, or to those who are or have been merchants, whose interest has led them to look carefully into the affairs of the farmers who have been their customers, to say if this estimate on the profit of that business is too small. Farm products are all heavy and bulky—hence expensive to transport. If the farmer fails to find a ready and remunerative market for the products of his capital and labor at his door, it very often happens that the price offered for it at a distance does not justify him in paying for the transportation; and if it be a product, like cotton, which requires the manipulation of the manufacture before it is ready for use, the great distance between the manufacturer and producer, and hence the absolute necessity for the employment of middlemen, necessarily leaves the farmer but a small pittance for his labor. I am not, however, calling attention to these things with the intention of suggesting a remedy, but simply to demonstrate the fact that the large amount of our capital and labor invested in the business does not, and I may add cannot, under the existing circumstances, yield a large profit.

"Now, we turn to Massachusetts and find her poulation largely engaged in manufactures and commerce, her wealth largely invested in these branches of business, and ample returns to her capital and labor invested in manufactures, secured by the protection always offered to this industry by the fostering care of the general government; for no matter whether the Whig or Democratic party has been in power, we have always had protective tariffs, the only difference being this: when the Whigs were in power the protection was direct, and when the Democrats were in power it was called *incidental.* This branch of industry has nearly always yielded handsome profits on the investments. So that today that small state, with a rigorous climate and almost sterile soil, as compared with Texas, is the richest state in the Union except New York.

"But this is enough, sir. I said that I opposed a system of public free schools to be supported by taxation, because it was not adapted to the condition of the people of this State, and I have endeavored to show the condition of our people by contrasting the density of our population, our pursuits, and our wealth with that of Massachusetts. I have selected the State of Massachusetts to use in this comparison, not only because it is one of the smallest, most densely populated, and wealthiest states in the Union, but also because its system of public schools is regarded as the most perfect, and because it spends more money upon its schools than any other state in the Union, and for the reason especially that the advocates of public free schools in Texas frequently point to the success of the system in that state as a reason for the adoption of a like system in this State. Grant, sir, that the condition of Massachusetts is adapted to the successful and beneficial operation of a system of public schools; that the density of its population insures the attendance of all its children at the schools; that its great wealth enables it to pay the taxes necessary to support the system without burdening the people, and that public schools are a prime want of that state—does it necessarily follow that the condition of the people of Texas demands such a system? Perhaps not one-half of the children of the more sparsely populated states can attend public schools, but taxation to support them reaches every man, woman, and child who own property in the State. I have shown the density of population in Massachusetts to be 186 to the square mile, while that of Texas is only about four to the square mile. I have shown the average wealth of Massachusetts to have been in 1870 almost $1,500 per capita to its population, and it will probably reach now $1,600 or $1,700, while the most liberal estimate for Texas will not bring its average wealth to $225. I have also shown that the returns from the capital invested in this State are small. Now, sir, do we want public schools? I may be answered, yes, if they do not cost too much. The experience of those states that have tried them demonstrates that they cost about one million dollars to the 100,000 of scholastic population, and our scholastic population will now reach perhaps 350,000. Can we bear taxation to that extent, or to the half of it? I say, no. And now, in view of the cost of a system of public free schools, in view of our poverty—for say what we will, we are the poorest State in the Union—and in view of the sparsity of our population and the unremunerative character of our capital, I again ask, is such a system adapted to our condition? Is it one of our wants? And again my judgment and conscience both answer *no.*

"Now, sir, let us turn to the consideration of this subject in another light. What relation do these children from 8 to 18 years of age sustain to the State? Are they other than citizens? What public duties may the State require of them which it dare not require of others? Have they not the same rights to the protection of the Government, both for their persons and property, that are enjoyed by other citizens? True, there are restrictions of a private nature imposed upon them by the laws of nature, and which are recognized by the laws of all civilized countries—duty to parents. The father has the right to control their actions during their legal infancy. So say all the law writers, English and American, but *mark you, it is the father,* and not the state, upon whom this right is conferred. And I ask, how dare a government professing to be free ruthlessly invade the sacred domain of private duty and private right? What right has it to lay violent hands upon these American citizens who have not attained their majority to force them to attend particular schools, study particular books under a particular teacher? Again, sir, by assuming control of the children for educational purposes it deprives the father of the sacred rights of parentage. It not only interferes with, but assumes, the holiest duties man owes to God. The thoughtful and conscientious father would never willingly commit to the State the religious instruction of his children. To him and to *him* *alone* does he understand the divine command to train up his children in the nurture and admonition of the Lord, to be addressed. And already, the Christian people of this country are rebelling at this usurpation of power, and are denouncing it as an indirect interference with the free exercise of religious liberty. For they understand religious liberty to imply not only the right of the parent to worship God according to the dictates of his own conscience, but as well, the right to direct the religious training of his children. It is bootless to say, sir, that the State does not propose to teach religion in her public schools; religion ought to be taught in our schools; they are the very places from which it should never be excluded. Its great principles should be impressed upon the minds of our children, by our teachers, upon every fitting occasion. Its beneficent influences should be felt in every department of learning. It is the leaven that should leaven the whole lump of human knowledge. And to the parent *alone* is committed the solemn duty of determining this course of instruction. Whether the State intends to interfere in the matter of religious training or not; if it selects the teachers, determines their moral qualifications, and prescribes their course of instruction, it *does* interfere with it, it *must* interfere with it. The very absence of a wholesome religious influence in a school is an unwarrantable interference with the proper religious training of the children of the pious parents who are compelled to send to it.

"Whence does the State derive the *right* to take charge of my children and say when, where, what, and by whom they shall be taught? Whence does it derive the right to take another man's money and devote it to the education of my child? That it has exercised the power to do these things history attests—that it *has* the power judicial construction has settled. But whence, I repeat, does it derive the *right?* Certainly not from Heaven, for the Great Ruler of Heaven holds the father directly responsible for the maintenance and education of his children, and to the end that he may fulfill these great duties, directly devolves upon him the authority to control them. I turn my eyes in vain to the great charters of human liberty to find whence the State derives this right. Whence comes it, then? What is its history, and what its concomitants? We will have to go back beyond the Declaration of Independence, back beyond Bunker Hill, beyond the landing of the Mayflower, beyond Magna Charta, and we do not find it in the English Constitution. No, sir, it is not there; that is the last place in the world to look for it, but back, back, along the centuries through thousands of years to Sparta, in the time of Lycurgus, I trace it, and maybe some gentleman more familiar with history might find it even farther back, nearer, the ragged edge of time than that. And what are its concomitants there? Iron money, the murder by the state of children on account of deformity. Adultery and theft are made virtuous. Then we follow it down to Prussia and what are its concomitants there? Absolute dominion of the government over the person of the subject from birth to the grave. The government registering his birth, the government putting him into the schools, the government putting him into the army, and when too old and infirm for service in the fields the Government putting him into the arsenals, dock yards, or fortifications, his place in the regiment never empty, the yoke never thrown off his weary neck until he goes to the grave or comes to America. Now let us follow it to New England and see what were its concomitants there—men fined for kissing their wives on Sunday, Quakers whipped out of the colony at the cart's tail on account of their religious opinions, poor wretches burned at the stake for supposed dealings with the devil. Now let us follow it to Texas, the only place in my life where I have met it face to face, and what have been its concomitants here? An irresponsible police, armed to the teeth, riding over the country arresting, imprisoning, aye, and sometimes shooting down citizens without an affidavit ever having been filed before a judicial officer of the State, charging them with an infraction of the laws. The suspension of the civil laws and substitution of martial law in different districts of the State in times of profound peace; orders to county boards of school directors to levy 1 per cent tax upon the property of the people, and when the boards levied less than the amount ordered to be levied, although the law left the amount to be levied to their discretion, the refractory boards *dissolved* by this (I had almost said omnipitent) power, and others willing to do the dirty work appointed; the children of people forced to attend schools, in many instances, under incompetent teachers—one, for example, within my own knowledge, who, in a copy set for his pupils, spelled the word education thus: *edjucation*, and an order requiring these instructors to teach the Constitution of the United States. Imagine if you can, sir, this teacher who spelled education as I have shown, teaching some booby of a boy who is barely able to spell out the story of the boy in the apple tree so graphically told by old man Webster, the proper interpretation of the Constitution of the United States, a question too great for the intellects of Webster and Calhoun, a question great enough to predicate the greatest war of modern times upon us, so great that still, after wasting hundreds of thousands of lives, and thousands of millions of treasure upon its solution, it remains unsolved.

"But we are told, sir, that men must yield up some of their rights, both personal and property, to secure good government, I grant it, sir, but they are to yield up their rights only to that extent necessary to secure protection to life, liberty, and property, to the whole people. But is it necessary to secure these great ends of government, that the father be required to surrender to the State the holy rights of fatherhood, and that the State should enforce agrarianism (for what is it, to take the hard-earned dollars of a portion of the people and divide it among all of the people for educational purposes, if it be not agrarianism)?

"If I honestly believed, sir, that it was necessary in order to secure the great blessings of good government for me to surrender these great rights to the State, I would do so; but reason, experience, and observation all teach me that it is not. I am nearly fifty years old, and the earlier years of my life were spent in Tennessee, my native state; for the last quarter of a century I have been a citizen of Texas, and I never saw this power exercised by a state until during the last four or five years, and I know that the security afforded by the state to life, liberty, and property was as ample for the first forty-five years of my life as it has been since. I know more, sir. I know that virtue, both public and private, was rated then as high as now.

"But we are told again, sir, by the advocates of public education, that education can be made cheaper when controlled by the State than when controlled by private enterprise; that if we will turn over to the State the money we expend upon education of our children, the State can manage it so as to pay for its assessment, collection, and disbursement, and take out of it also a sum sufficient to pay the salaries of the host of officers necessary to the proper administration of a system of schools and educate all the children of the State, and still have a surplus left; and strange as this statement may appear, I will not undertake to refute it, for I can very well see, sir, how, if Smith, who is sending his son to college, where he is being taught the languages and sciences, and his daughter to the academy of Madame Destamovile, where she is being instructed in French, music, dancing, and fancy work, at an average expense of $15 a month, will turn over to the State the money he has provided to educate them, the State can, with the amount, hire a teacher who will teach spelling, reading, writing, geography, and arithmetic, after the most approved common school method, not only to the son and daughter of Smith, but to the children of Brown as well, at 10 cents per day or $2 a month, and still have left money enough to pay for running the machine. And I can see as clearly, sir, that, if Smith will turn over to the State the money he spends annually for sugar, tea, canned fruits, jellies, lawns, muslins, silks, laces, flowers, flounces, furbelows, broadcloth, box-toed boots, fancy neckties, and plug hats, the State can, with the amount, feed and clothe the families of both Smith and Brown on cornbread, jerked beef, coffee straight, brown domestice, calico, wool hats, and brogans, and still have enough left to pay for the trouble. And I can also see how, if all the Smiths in the State will turn over to the State all the money they spend on pew rent, spittoons, footstools, cushions for pews, and other incidental expenses they pay for their churches, the State can, with the amount, build less costly houses of worship, hire $250 preachers, and furnish facilities to all the Smiths and Browns in the State, though the article of divinity might not be altogether palatable. And I can see as palpably how a sack of flour is cheaper to a man when the State takes $5 out of his neighbor's pocket to pay for it, and sends it home to him, than it is when he has to work for the money to buy it and has to pack it home on his shoulder, and I think I can see as clearly as that, if the State has the right to do one of these things it has the right to do all of them. If the State may upon the plea of 'necessary to the general welfare' take under its control the education of the people, it may, upon the same plea, with the same propriety take charge of their religion, for if education be necessary to the maintenance of good government, the observation of the precepts of religion is more so, and if the State has the right to enforce agrarianism for one purpose, it has for another, and if it may do so to any extent or upon any pretext, it may do it for any purpose, and to any extent.

"But we are told, sir, by the friends of public education, that if we do not provide a good system of public schools, emigrants will not come here to settle and develop the wealth of this great State. Very well, sir, let them stay where they are, or go somewhere else. For one, I do not want men to come here who are moved to do so by the desire to have the hard-earned dollars of other men applied to the support of their families. And I should think, sir, that men who are too *lazy* to educate their own children, and *mean* enough to want other men to be forced to do it for them, would be a long time in developing the wealth or greatness of any state.

"Public free schools cannot flourish in a state where private educational enterprises are left free to compete with them. Their existence depends upon the destruction of private schools, and states which have adopted them have found it necessary to tax so heavily to maintain them that the result has been that the people could not pay their taxes and send to private schools, hence the destruction of all private school enterprises and the glorification of free schools.

"The friends of public education point with pride to the chapter devoted to this subject by the great chancellor, Kent, and say, 'who is so bold as to attack that authority?' I have read that chapter, sir, with some care, and I fail to find in it any argument to sustain the right of a democratic state government to do this thing. It consists chiefly of historical *facts* and of commendatory *remarks*. How the pulses of that great man's intellectual being would have quickened, how the current of his reflections would have widened and deepened if he could have turned to a chapter devoted to the same subject, in the work of the great commentator on English law, instead of having to go for precedents and authorities to Sparta and Prussia. But England, more careful of the freedom of her subjects than we are of the freedom of our citizens, has never robbed the father of his sacred right to control over his own household, or shifted the burden of providing for them from his shoulders and laid it on the shoulders of his neighbor. Such an idea had no place in the English Constitution, is not homogeneous with the spirit of liberty which pervades it. The leading idea of the English system, as of our own, is the liberty of the citizen. But this idea of public education is at home in Prussia, and was at home in Sparta. The leading idea of Sparta, and the leading idea of Prussia is, physical strength, the power to resist physical aggressions and to make conquests. The idea of the sacredness of 'personal liberty, personal sanctity, and personal property' had no part in the Spartan system, and has almost as little in the Prussian system.

"Education is a good thing if it be of the right sort, if it tends to elevate and purify the hopes, aims, and affections of the people, and no citizens more fully appreciate than do the people of Texas the value of such education, and its advancement is worthy of our most earnest efforts. But let us be careful that the means we employ for its advancement are worthy of the great end sought to be attained.

"For one, I am unwilling to meet my constituents and say to them, I deem you wise enough to frame and administer a government for the protection of life, liberty, and property, but altogether incompetent to exercise guardianship over your own children or incompetent to use the money which you propose to use for their education.

"It is proposed that the State shall provide out of the public means, now at its disposal, more liberally than any government on earth has ever done for the encouragement of general education. We propose to set apart the 60,000,000 acres of land heretofore devoted to educational purposes, over two and a half millions in bonds and money, and one-half of the unappropriated domain now subject to disposal by the State. It is proposed to make this donation the basis of a permanent fund, the interest to be applied annually to the payment of the tuition of all the indigent orphan children of the State, for four months in each year, and the remainder to be applied to the payment, *pro rata,* of the tuition of all other children in the State. What more can be asked? What better can be done? But, sir, if this munificent provision had not been made, I would still feel disposed to say to the friends of education, 'let not your hearts be troubled.' The seeds of intellect are sown broadcast by the hands of Him who hath promised that 'seed time and harvest shall never fail upon the earth,' and we may, if we will, read in characters as clear as ever illumined the page of holy writ, in the social and physical condition of the people of Texas, and in the immutable laws which control the operations of the human mind, the promise of the intellectual harvest. But let us beware, for as the one is predicated upon the faithful toil of the husbandman, so is the other upon the unaided throes of the soul in which the sod lies buried. And the clouds which lie so low and heavy over the heads of the poor are richly fraught with the showers of effort needful for their harvest.

"The State has no power to evoke those burning thoughts which, like newly risen suns, light up the fires of enthusiasm on the altar of human souls. Or to call forth from the secret chambers of being, in which they have been imbedded by the hand of omnipotence, those staid grey bearded thoughts which in the fullness of time come forth, almost without disturbing the consciousness of their authors, and with stately steppings walk adown the aisles of time, overstepping the feeble barriers of centuries and cycles, eras and epochs, and, like the divine benediction, blessing the generations of men to the later syllable of recorded time.' "

Mr. B. Abernathy, of Camp, opposed the amendment. He said the Committee on Education would propose a provision similar to the one the amendment sought to strike out.

Mr. Sansom's amendment was tabled, no record vote being taken.

Mr. Wright moved to strike out of Section 48 of the legislative article as proposed, "for the support of the eleemosynary institutions of the State," and insert, "for the support of the blind asylum, deaf and dumb asylum, and insane ayslum." He said he had a good deal of confidence in legislatures, but he believed the utterance of fundamental principles ought to be so worded as to prevent misunderstanding. Eleemosynary was a big word and capable of being misinterpreted.

Colonel Crawford said the use of any other word might exclude other charitable institutions.

Mr. Wright said that was the very object he had in view. He did not want the people burdened with the support of charitable institutions. Some philanthropist might pick up all the strumpets in the State and ask the State to support them in an asylum. He had never believed in the doctrine of robbing Peter to pay Paul. As those institutions had been named and were considered State institutions, he had mentioned those exclusively.

Mr. Brown said that nineteen years ago 100,000 acres of the public domain had been set aside for the support of an orphan asylum.

Mr. Wright's amendment was adopted by a vote of 42 to 31.

Section 49 of the proposed legislative article read as follows: "The Legislature shall have no power to contract or authorize the contracting of any debt or liability on behalf of the State (except in cases of insurrection or invasion, and then only to the amount of $500,000), or to issue bonds or other evidences of indebtedness therefore, except in the renewal of existing bonds, when they cannot be paid at maturity out of the sinking fund or other resources."

MR. J. W. FERRIS, of Ellis, moved the following as a substitute to Section 49: "The aggregate amount of debt hereafter contracted by the Legislature shall never exceed the sume of $100,000, except in the case of war, to repel invasion, or suppress insurrection, and in no case shall the debt be created or the bonds issued except by a vote of two-thirds of the Legislature." He said that the clause was identical with the one in the Constitution of 1845. It was impossible to anticipate what might occur in future years. In case of the failure of crops, fire, or robbery of the Treasury, the clause as it stood would leave the State without resource.

MR. DEMORSE said the matter had been well considered in the committee. The people had heard enough of having their bonds hawked about Wall Street and sold for 60 cents. As the chairman of their committee had observed, "once let them get a little into debt and they would soon be at the end of the rope." If they were compelled to make a little debt it could be paid as it had been in the past.

COLONEL CRAWFORD contended that while this might do very well in time of peace, in time of war, when the State had control of every man's person and property, the Legislature ought not to be restricted in the creation of a debt to repel invasion or to suppress insurrection.

On the suggestion of Mr. Stockdale, the words "except in the renewal of existing bonds when they cannot be paid on maturity out of the sinking fund, or other resources," was added to the substitute, which was adopted for the original clause by a vote of 55 to 26.

JUDGE REAGAN moved to substitute the following for Mr. Ferris' clause: "No debt shall be created by or in behalf of the State, except to supply deficiency in revenue, repel invasion, suppress insurrection, defend the State in war, or to pay existing debts, and the debt created to supply deficiencies of revenue shall never exceed, in the aggregate, at any one time, $200,000."

JUDGE REAGAN observed that this was a literal copy of a clause from the Constitution of Pennsylvania, except as to the amount, which was $1,000,000. The convention which framed the Pennsylvania Constitution was one of the ablest bodies which had ever assembled in any state. The only question in his mind was the amount to which it should be limited.

MR. MILLS moved to add "and for school purposes."

MR. MCCORMICK moved to table the amendment.

MR. DOHONEY rose to a point of order that an amendment to a substitute, not adopted, could not be entertained.

MR. MILLS said such a course had been pursued continually when made by the other side, and the Chair did not refuse to entertain it. The rules ought to govern all, whether in the minority or not.

THE PRESIDENT ruled the point of order not well taken, and Mr. Mills' amendment was tabled by a vote of 65 to 20.

The question recurred on Judge Reagan's substitute.

MR. DEMORSE said it was a proposed increase of the public debt, and called for the yeas and nays.

JUDGE REAGAN denied that it was an increase.

MR. DEMORSE said that it did not make a finality of the public debt, although it provided $200,000 for a specific purpose.

JUDGE REAGAN said his substitute limited the amount of debts to supply deficiencies at $200,000, and no other debt could be created except to repel invasion or suppress insurrection.

MR. DEMORSE said that he answered his question. It did provide for the creation of an unlimited debt, of which $200,000 was limited to a special object. If this was passed the debt would rise to a million dollars, for there was no restriction on the Legislature in time of war. The committee had been careful to limit the amount of the debt in time of war to $500,000, because it was the duty of the general government to defend the State.

MR. MCCORMICK asked what would happen if the frontier were to be invaded.

MR. DEMORSE replied that he supposed the patriotism of the people would be equal to the occasion, as it had been before, and that they would defend the frontier without pay. (Applause.)

**JUDGE BALLINGER** spoke for the Reagan amendment. He hoped it would not go on the record that the Convention had provided for a possible $500,000 and no more to defend the State in case of war.

The Reagan substitute was adopted in the place of that of Mr. Ferris by a vote of 40 to 34.

### *The Land Subsidy Question*

Section 51 of the proposed legislative article read as follows: "The Legislature shall have no power to make any grant, or to authorize the making of any grant, of public money to any individual, association of individuals, municipal or other corporation whatsoever, *provided,* that this shall not be so construed as to prevent the grant of aid in case of a public calamity."

**MR. J. E. ARNIM**, of Lavaca, moved to amend Section 51 by adding to the clause inhibiting the Legislature from granting or autohrizing the making of any grant of public money to any individual, etc., by adding the word "land." The amendment would have forbidden future land grants to railroads and other corporations.

This proposal produced a long and energetic debate.

**JUDGE REAGAN** defended the land subsidy system. It had been the policy of the State since 1854, had developed the east, the northern, and the middle sections, and he felt that the west ought not to be deprived of similar advantages. He had no personal interest in the matter, as three routes of railroad travel centered in the town in which he resided. He knew that with a large proportion of the people of the State, which feeling was represented in part by the Convention, that the hair turned the wrong way when "railroad" was mentioned, but prejudice ought not to prevail against a policy which had conferred such great benefits on the State.

**MR. DARNELL** opposed land subsidies. He did not believe that a single mile of railroad had ever been built by them. The Texas & Pacific had a subsidy of land eighty miles wide by thirty in length, and three years had elapsed and yet it had not been able to build a little road from Dallas to Fort Worth, a distance of only thirty-six miles. It would be a great thing if the Texas & Pacific could get through to California, but it would never be accomplished by land subsidies. He spoke of the frauds in the Angelina River scheme. He was in favor of the State receiving the benefit from her lands, and was opposed to railway corporations getting them for nothing.

MR. DEMORSE said he concurred in the doctrine of the gentleman from Anderson (Judge Reagan), and thought it was only just that the west should share in the advantages of railroads equally with the east, the north, and the center of the State. He did not care how far the argument went that the public lands had been wasted, he could not vote to deprive those of the use of them who had, in common with other sections, wrung it from their enemies with their blood.

MR. MCCORMICK said he was opposed to land subsidies. He said all of the good lands had been given to corporations for the benefit of the country east of the Colorado, and if there was a single league of good land left he wanted it to go to the school fund.

COLONEL FORD said the last speaker was mistaken. It was a common error to suppose that what was left of the Panhandle and Staked Plains was worthless. It would in time be of great value, while its climate was one of the most salubrious in the world. He asked, in justice to the west, that the system be retained; otherwise, division would be agitated, and, although he should always oppose a division of the State, the voice of one man would be as nothing. He said a meeting would be held immediately representing the interests of the people west of the Colorado, and asked for a postponement of the action of the Convention until the wishes of that meeting could be known.

MR. RUSSELL, of Wood, said that while he was in favor of postponement he was opposed to aiding railroads by giving subsidies of land or money.

MR. F. J. LYNCH, of DeWitt, said that if the land was worth nothing he could not see why delegates were making such a loud outcry against giving it to railroads. He favored postponement.

MR. ARNIM withdrew his amendment, and the Convention adjourned for the day.

## TWENTY-SECOND DAY

### THURSDAY, SEPTEMBER 30, 1875[42]

### *The Land Donation Clause*

Section 51 in the proposed legislative article was taken up as unfinished business, the pending question being the adoption of

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[42] The proceedings for this day were taken from the *State Gazette* (Austin), October 1, 1875.

Mr. Arnim's amendment, to amend Section 51, inhibiting the Legislature from granting public lands to individuals or corporations.

MR. STOCKDALE opposed the amendment. He said Judge Reagan had well said that it had been the policy the State since 1854 to foster internal improvements by land donations, and every Legislature had recognized the policy to a more or less extent. Long before land was appropriated for educational purposes, donations of lands were granted by legislative charters to some sections, to encourage internal improvements. At that time there were two policies discussed before the people and in the Legislature, one emanating from Galveston, suggesting that the State, by amendment to her Constitution, become the owner of works of internal improvements, railroads being included in the plan. That plan did not do justice to the whole country, and another was proposed, which was to unite public education and internal improvements. This plan was adopted by loaning $2,000,000 in United States bonds to railroad companies—these bonds being the proceeds of the sales of lands constituting a fund which had been devoted to school purposes—at $6,000 per mile on the company's first mortgage bonds, $1,000,000 to be expended for such purposes east of the Trinity River, and $1,000,000 west of it, and in addition to that, under a general law, sixteen sections of land to the mile were given to all railroads for every mile of completed road. With this encouragement they had been built. Before that time he thought some work had been done on the Harrisburg road, but the whole system had originated in the loan of this money and the grant of sixteen sections of land to the mile of completed road. The population at that time was just as great west of the Colorado as elsewhere. East of the Colorado was nearer the settlements, and connected more readily with Galveston, hence the donations of land and the whole of the school fund, except so far as was used for other purposes during the war, was used to construct works of internal improvement east of the Colorado, except some twenty-eight miles of railroad built west of it, for which the company received no loan of money. An effort, successful in part, had been made to build a road from the coast to San Antonio. This was the best twenty-eight miles of constructed road in the State. The Confederate Government protected and rebuilt the roads of the east, but they destroyed those of the west.

Since the war immigration had settled up the section east of the Colorado until the great mass of the State's population was to be found there. How was it built up? By means of the railroads which had been constructed. It had been said by those opposed to that view that not a single mile of railroad had been built by donations of land, but he thought the facts clearly controverted that statement. But Western Texas had not been benefited by the lands, except as the overflow of population might reach that section, or as citizens of the east who had sold their lands might locate there. There was now none of the school fund left to lend. He was not in favor of the State putting any more money into railroads, but there were lands she might use for that purpose, and they lay west of the Colorado. The International, which by a compromise had received twenty sections to the mile exempt from taxation for twenty-five years, he ventured to assert, would hardly cross the Colorado. There was no railroad connection with Matagorda, Aransas Bay, Corpus Christi, or the Rio Grande. There was one point between Point Isabel and Brownsville where there was a little road, but that was all. It was said that the public domain west of this river was worthless and could not aid in the building of the railroads, but in his opinion it was as fair a portion as any in the State, either for agricultural purposes or otherwise. The gentleman said that wherever railroads would pay they would be built. He ventured to say that railroads had been built in Texas that did not pay, but they soon settled up the country and finally paid. With the exception of fifty or seventy miles of the Pierce road which had no connections, the people of the west had been utterly ignored in the matter of railroads, while the east had the railroads, the advantages and conveniences brought to the homes of its people.

He asked that the same principle which had supplied the east with railroads be applied to the west, so that it might be placed on an equality with the other sections. He feared that there would be no unanimity on the subject. The Mexicans, when they invaded the country, were met on the frontier by those to whom he had alluded on previous occasions. They were the people who had suffered and had been driven from their homes. The battles of victory had been fought elsewhere. So it had been also in the political history of the west. The battles of victory were fought elsewhere than on the frontier, and, as the west had been left desolate before he presumed she would still be left in the same condition. It was for the Convention to declare, as was declared in the platform framed by the Convention that nominated Governor Coke, whether this policy should cease or continue until the west had received its share of the benefits. The east had not been cut off from its advantages. Then, why should the best be? Because the Convention might have the right or power to do it did not make it proper, and because the benefits of the system were no longer to accure to the east constituted no reason why the other regions of the State should be deprived of them.

MR. H. C. KING, of Kendall, followed with a speech in opposition to the amendment.[43]

Mr. King said: "Mr. President, I have been content to cast my vote on most of the matters coming before the Convention without expressing my views. The question before this body this morning, however, seems to me of such importance to the whole State, and more especially to that section which I have the honor in part to represent, as to require at least a brief statement of the reasons which shall govern my vote.

"The proposition is to prevent the Legislature from hereafter granting lands in aid of internal improvements. I unite in the thanks expressed by the delegate from Calhoun, Governor Stockdale, to the delegate, Judge Reagan, from Anderson, for the spirit with which he opened this discussion. That spirit of justice manifested in his remarks is highly appreciated by western members on this floor, in view of the peculiar position occupied by Western Texas, as compared with other sections of the State, with reference to facilities of inter-communication and transportation.

"The first question that presents itself to my mind in this subject is as to whether there is a principle involved in the proposition embodied in the amendment of the delegate from Lavaca—to inhibit any further grants of land for purposes of internal improvements. Is there any principle of government or ethics, political, commercial, moral, or social in it? I presume, Mr. President, that no man of ordinary intelligence will undertake to say that there was originally any such principle whatever involved. The public lands belonged to the Republic—afterwards the State of Texas. It was a great domain, unoccupied, unsettled, a wilderness. It was the property of the people of Texas, to do with as they saw fit in their own best interest and that of posterity. There was a question as to what use could be made of it, so as best to promote those interests. This was the question up to the year 1854, when it was resolved (and most wisely, I think), to inaugurate the policy of encouraging the construction of railroads by grants of this public domain. Thus, as a matter of expediency, this plan was adopted, and its wisdom being vindicated and sustained by public opinion, it has continued with but a temporary interruption under the Constitution of 1869, until the present time. But, sir, while, as I have said, there was no principle originally involved in these donations of land, this course has been so long pursued as to have become the settled and established policy of the State, and to arrest this policy at this time would be to violate a principle. This I declare to be the principle of good faith and public honesty. The State of Texas, by that course of action, which applies to states as well as to individuals, is estopped from taking such a step backward at this late day. Under the fostering care of that policy nearly fourteen hundred miles of railway had been constructed in the State. These railroads have received something over twenty million acres of the public lands, and today form great trunk lines traversing the State from the Sabine to the Colorado. They constitute now perhaps a sufficient number of thoroughfares for those sections of the State. As that rich and favored region increases, as it is now so rapidly doing, in population, wealth, and prosperity, and capital accumulates from the industry of the people, tap and branch roads will be built without more State aid, to meet their growing demands of agriculture, commerce, and inter-communication. How is it west of the Colorado?

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[43] Kendall County was a frontier county in 1875. Mr. King's remarks are taken from the *State Gazette* (Austin), October 10, 1875.

"There are about one hundred and fifty miles of railroad now constructed west of that river. Beyond here, the vast territory known as Western Texas, having with it capacity sufficient to make several states as large as the country east of the Colorado, now furnished with railroads, is without railroads, with the trifling exception I have stated. With the finest climate on the continent, and with resources of immense wealth, in agriculture, livestock, and minerals, this great region is undeveloped, the greater part of it a wilderness. The people who inhabit that territory call themselves Texans. They are entitled, as citizens of a common state, to equal rights with those who live in more favored sections. They are yet unsupplied with the great modern improvements in travel and transportation so vital to their security and development, and they now turn anxious eyes to this Convention, as they have looked for years, but so far in vain, to this Capitol, for a just recognition of those rights, and of the necessities of their condition which are pressing heavily upon them.

"Then, sir, at the threshold of this question, I ask gentlemen whether they seriously mean to sustain the amendment which contemplates such injustice to the west? I have said that Texas is estopped forever by her long established policy from refusing to us of the west our due share of the public domain to encourage the construction of railroads, and I repeat that a great State like Texas is cannot afford to perpetuate an act of such gross bad faith to a large proportion of her citizens. It would be an infamous betrayal of the high trust which she holds for the benefit of all her people of every section.

"Texas is today the hope of the people of the misgoverned states of the South. She is alike the land of promise to the thousands who desire relief from the inhospitable snows of the northwest. Immigration from these sections of our own country has had a considerable part in increasing our population at the rate of a quarter of a million a year. These people of the old states look upon Texas, as she is indeed, as a state of heroic proportions and history, of good government, and with a hospitable, brave, and just people. Who can estimate the degree to which Texas owes this proud position to her railroad system? Who can calculate the benefits derived from the wisdom of the policy put in motion by the fathers of the Democratic party more than twenty years ago, by which the public domain has been untilized in perfecting this system of internal improvements? Sir, these benefits to the people east of the Colorado are incalculable, and now, forsooth, it is coolly proposed to cut off the west from her just and fair prospect of participation in these blessings! Mr. President, I may be speaking to an adverse majority in this Convention. Be it so, I shall not be deterred from declaring my convictions, nor from the performance of my duty toward those whom I represent here. I say, therefore, sir, in all truth and candor, to this body, that if you pass this measure you will have done more to crystalize that feeling on the subject of a division of the State, which has for years pervaded the west, than will be in your power, or any other earthly power, to undo. I mean this exactly as I say it. The people of the West are not a sectional people. They live under the shadow of the Alamo, among the halls and shades of the early battlefields of the revolution, and they treasure the memories that cluster around the Lone Star flag that at this moment looks down upon this Convention, fit emblem of that unity of purpose and patriotism which secured the independence of Texas, and I hope as well the singleness of justice meted out by the State to all her citizens alike. But, sir, my people cannot live on heroic memories alone. If they are patriotic, they know their rights, and in justice to themselves and their posterity, they will not tamely submit to such treatment. I make no menaces or threats; I have never been an advocate of division; but I tell gentlemen they are approaching a question that will be regarded as a final test of the temper of the east towards the west, and the weakening cords which bind the two sections together will snap asunder, if a measure which so outrages common justice passes this Convention. Sir, I have spoken only incidentally of the material condition of the people of Western Texas. Let me say that much as they need railroads for the advantages they bring in the enhancement of property values, increase of population, of facilities for trade and travel; in short, for all the innumerable elements of development and civilization which follow in their train, there is not a citizen of the thousand miles of frontier who has not been for years looking to the iron horse as his best and only secure hope of deliverance from the scalping knife of the Comanche, the Kiohwa, and the Apache.

"It is true, sir, that we hope in due time to say to our friends in Virginia, Georgia, Tennessee, and other states, not only that life and property are secure on the Nueces, the Llano, the San Saba, and the Pecos, but that on those lovely streams they will find schools, churches, law and order, and good society. But this must come from railroads, if it comes at all within the next half century.

"I have not referred to the arguments of the gentlemen who have advocated this measure, for I have listened in vain to hear a single reason advanced in its favor. The delegate from Tarrant (General Darnell) says that were he convinced that a single mile of railroad had ever been built by means of land donations, he might be in favor of continuing the policy. Now, sir, I undertake to say that not a single mile of railroad has been constructed in Texas *without* such aid. And I will say further, that but for the policy of land donations, Texas would be today practically without railroads.

"In conclusion, Mr. President, I once more protest against the measure. It is fraught with mischief, and if adopted by this Convention, will, in my judgment, surely affect the integrity of the State."

MR. LYNCH said the opposition might have the strength to pass the amendment, but was it well to use it? They might take the land if they wished, but they could not take the associations connected with it; could not take away the memory of Gonzales, where the first shot was fired for Texas independence, and whose people burned the homes over their heads rather than leave their property for Santa Anna's advancing columns. The people of the east had utilized the lands for their own benefit, but those of the west would share in its historical memories forever. They might even take Gonzales from them, as they had the numerical strength; might also take Goliad, where Fannin and his 450 heroes were sleeping unconscious of this meditated wrong. The delegates from the east had the strength and power to do it. He only asked for justice for his people; nothing else.

MR. MCCORMICK said he differed from the eloquent gentleman who had preceded him. Coming from the west, as he did, he experienced the same degree of patriotism that actuated them, but he differed entirely from them and was decidedly averse to waving the bloody flag before that Convention. He differed as to the sentiment it was said prevailed with reference to a division of the State. He believed that Texas was always to be one and indivisible, and he knew that it should be so. He hoped that gentlemen on that floor would not be influenced by any cry of dismemberment that might come up from either the east or the west. On behalf of his people, he claimed they were as loyal to Texas as those of the east or any other portion of it. They came now to the facts and the argument. It was claimed that the Convention should not donate the remaining lands to public school uses because the West had no railways.

MR. KING interrupted by leave to say that neither he nor any one else had made any such argument. No one objected to the donation of lands for school purposes, as granted in alternate sections.

MR. MCCORMICK asked why he objected to donating all of the public lands for school purposes.

MR. KING said it was because they needed the lands to aid in getting internal improvements, and because he thought more benefit would arise from donating alternate sections to the school fund than by another method.

MR. MCCORMICK then asked Mr. King why he argued that West Texas had derived no benefit from the donation of public lands.

MR. KING said: "Because she has received no benefit directly in aid of railroads, while the east has them in consequence of land donations."

MR. MCCORMICK then asked if he (Mr. King) advocated the land donation because he wanted West Texas to have railroads.

MR. KING answered in the affirmative, and added that the school funds would lose rather than gain by withholding lands from the railroads.

MR. MCCORMICK said the opposition claimed that they had not had their just proportion of lands for railroad purposes. A section of

640 acres fetched on the streets of Austin only about forty-one dollars, and that would hardly pay for the survey of the land and its alternate section and incidental expenses connected therewith, but if reserved for a few years for the school fund it would become valuable. Now it was worthless. Give this land to the first company that offered to build a railroad, and where would Texas be then? He was surprised that gentlemen should be so magnanimous of those lands when they amounted to nothing.

MR. THOMAS LOCKETT, from Washington, said he came from the center of the State, but he thought he represented his people correctly when he said that they desired that the same opportunity they possessed should be extended to the people of the west. There was undoubtedly a contract between the east and the West, and it ought to be held as sacred as if founded on constitutional law. It was a subterfuge for enemies of internal improvements in the west to say they wanted these lands for public free schools. The gentleman from Colorado (Mr. McCormick) had said that they might as well attempt to build railroads out of moonshine or Gulf water as out of the land donations. He had to tell the honorable gentleman that if that statement was true it applied equally well to the public schools, for they could not be supported on moonshine or on the water from the Gulf of Mexico. The lands would never become valuable until railroads passed through the vicinity. He not only believed that the west should have land donations, but thought the fund arising from the sale of school lands, if any there were, should be loaned to help build them. Let them help the West, and where the wolf roamed and cactus grew cities would spring up like Palmyra from the desert.

MR. FLOURNOY spoke next and opposed the Arnim amendment, which had been renewed by Mr. German, providing for an inhibition of future land grants to aid railroad construction.[44]

Mr. Flournoy said: "Mr. President, we are a body nearer the people than anything political skill has devised; we are as far as it is practicable to be, the people of the State of Texas, but we are so in a just sense of the word only so long as we express in our action the will of the people. I may be mistaken. Perhaps the sources of my information are not reliable; perhaps I attach too much importance to the recently expressed will of the people, but so far as

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[44] This speech was printed in full in the *State Gazette* (Austin), October 19, 1875.

I am informed, it is the will of the people of Texas that the public lands shall be used in part for the encouragement of the construction of railways. Am I wrong? The Constitution of 1869 forbade grants of land for this purpose. I have heard that Constitution complimented in regard to that point on this floor. The people of Texas, through their representatives in the Legislature, submitted an amendment to the Constitution, and acting upon that idea they have already, since the formation of the Constitution of 1869, incorporated into that Constitution an express provision, for the known purpose, the undisputed purpose, of donating land for internal improvements.

"Thus far I take it, we are capable of judging the will of the people, but is it for the interest of the people? Have the people acted intelligently on the subject? Do we act intelligently in regard to that will, not only as being an expression of that desire, but as founded on a just and conscientious consideration of public interest? Texas has in her borders some fourteen hundred miles of railroad. It was said yesterday that the public lands had done nothing for the construction of railways. The railroads have been constructed; and as to the companies constructing them, the great feature of their credit was the lands donated by the State. The first railroads constructed were in part aided by another mode, by the loan of the school fund upon the bonds of the railroads, looking in the main for the construction of future roads from the land that had been donated to them. I take it, then, that it is not clear that the donations of lands have not assisted in this work; but, on the other hand, as far as human reason can ascertain the causes of results, it is evident that they have been eminently efficient in producing these railroads. But was it wise, and has it been useful to this State? Is there a man within the sound of my voice—and I believe every man here is honest and willing and anxious to serve the people—who would be willing to have every railroad in the State of Texas wiped out of existence today? Would he be willing to have every mile of road, whose construction was promoted by donations of land, destroyed today, and the lands they have received revert to the public domain?

"I know that my friend from Colorado will not say that. If they have been useful, and we think we have been benefited by them, are we intelligent in thinking so? The highest act of statesmanship is that comprehension of the uses of government which so promotes the increase of the subjects, and the values of taxation, that in its legitimate operation its necessities may fall more lightly on the individual taxpayer. The encouragement and consequent construction of railroads have largely aided to reach this result. Don't tell me that this has not been done. Look at the map yonder. It speaks for itself. The world has scarcely known such increase of population as Texas has realized within the past decade. It is argued by political economists that every man who becomes a citizen is of the value of $1,500 to the body politic. How many hundreds of thousands of these men have come to Texas within ten years? Did they come because of railroads? I do not wish to make a faulty argument. Some did and some did not, but while we cannot get at the precise motives of the majority of our immigrants, it is fair to assume that they were desirous of coming because of railroads in the State, and the best evidence of that is, that where cheapness of lands would permit, they have congregated on railroad lines. Then I take it that immigration has been greatly induced on account of the existing and prospective railroads in the State. Again, have the lands adjacent to these lines increased in value? Take for instance, the County of Brazos, represented by my friend from Bryan, five, ten, or fifteen years ago, would it have approached within a fifth of what it is today in actual value, if we do not consider the value of the slaves of that day? I take it that it would not. The assessor finds five times the values to tax he did ten years ago, and this is the rule in a measure wherever the railroads have reached their arms across the State. Immigration, development, and wealth follow their lead as surely as does the noon follow the sunrise. I have not spoken of the ease of travel, of the facility of transporting the products of the soil, of the exchange of products for the necessities, the comforts, and the luxuries of life, which go far to make it enjoyable; of the pleasure of families being within easy communication—and yet these are considerations for the statesman—but I have put my argument on that ground which the enemies of the system have chosen, on the material interests of the State in a monied point of view.

"Am I correct in the proposition that the people of Texas desire that some of the public lands shall be appropriated in a legitimate mode for the purpose of increasing the works of internal improvements? Am I right in saying that they have acted wisely and well, and when they have so acted, they have been advancing the material interests of the State? If so, why the argument that the Legislature has squandered the public domain? I have heard that argument here, sir, but I assert that not an acre of the land has parted from her true ownership, unless it has been for completed and operated railway, and not until after completion."

Mr. McCormick interrupted to ask, "How about the improvement of the Brazos and other rivers?"

Mr. Flournoy said he took it for granted that there might be some improvements there and on the Sabine and Nueces, but he was not informed whether they had been beneficial to either the streams or the people. If there had been imprudent legislation there it should be remedied; they should not destroy the great economical progress of the age in railways, which alone he was discussing, which underlay the progress and happiness of the people, because a measure of useless donations to railroads and ditches, which did not receive the approbation of the people, had not succeeded as well as was desired (or had not succeeded at all). Mr. Flournoy continued:

"I am not an enemy of railroads, but I think it is wise to encourage them. I think the secret necessary to their successful operation and the protection of the State, is to keep them now and forever under the political control of the State, to regulate their actions, prevent discrimination, limit freights and fare, and to consider them as a part of the utilized power of the State. It was a part of my convictions when I introduced the railroad resolutions, to put a curb on them, to keep them under the law-making power and amenable to the courts, in such form and with such intelligent design as would protect my people from discrimination, combination, and oppression. I merely desire to state these propositions and answer the argument that the public lands have been squandered, for not an acre has, or could have, passed out of the hands of the State except to completed railroads. I am not informed as to these river matters, and have not read the laws concerning them, and have never deemed such a policy wise; but so far as the railroads are concerned, all this talk about squandering the public domain has nothing in it, because it is not based upon even the shadow of fact, the people having received the blessing before having given the aid.

"Pardon me, sir, if I go a step further. I have discussed it as a question of State interest that addresses itself to me, regardful of the legitimate ideas of progress and material wealth, but there are other questions concerned with it. That great section known as Western Texas has as yet scarcely felt that the State to which it belongs has ever used our wealth on railroads. I am not one of those who condemn the earnest appeals of gentlemen from the West, when they tell us that glorious as has been their history in the past, honorable as has always been their intercourse with us in the common interest, earnest as they are that we should join them in a common brotherhood of progress and go forward with them in a march to empire, which is the future glory and destiny of Texas, yet they fear division if injustice be done that portion of our people. I hate the very thought of division; it is statesmanship to heed the complaint of injustice, and it is wrong to incite ill feeling in any section of a great state. No man here has stated that he would favor division. We have only been warned that the feeling might be growing; that the hand offered us should be taken, and I heed it because I feel that the Gonzales, the Alamo, and the Goliad of today are as necessary to our progress in the future as is their past to our glorious history. We can spare neither. I should dislike to see the history of Texas mutilated and I trust my children and my grandchildren and my great-grandchildren—should they follow me —will never read the history of Texas divided into two chapters or perhaps three—Eastern, Middle, and Western Texas. I wish them to feel that when they read of Fannin at Goliad, or of the Alamo, or of the men who fired the first guns at Gonzales, that it was their ancestry who had taken part in the struggle and helped to cover it with renow glory. I want them to feel that the Texas their ancestors created shall be Texas forever. The highest motives of political intercourse, the highest considerations of political economy, the sublimest impulses of true patriotism, should respect the law of justice to every section of the State.

"But it is not alone because of the West that we should respect this feeling. I shall not give you other than a correct view of it. I ask you to cast your eye over the southeastern portion of Texas, rich in all the products of nature, buoyed up with the hope that their homes would soon be reached by the railroads and they enabled to send their agricultural products to market, but apart from the line from Marshall to Houston, you find no railroads anywhere in Southeastern Texas. We have a great frontier on the north. Do gentlemen tell me that it is provided for by railroads? Is the Texas & Pacific to be built? The friends of that road have told Congress repeatedly that it cannot be completed unless their bonds are endorsed by that body. The gentleman from Tarrant (Mr. Darnell) told us that with all their energy and struggles, that company cannot complete their road from Fort Worth to Dallas. Yes, it is a lamentable affair that a road that Texas has helped with more liberal donations than any other, that lies right in the midst of live settlements, upon the richest plains of the north, and in the very midst of a prosperous and enterprising people, should languish and die. If the present company should fail, as they may, do not deprive the State of the opportunity to carry out the enterprise. Don't tell me that the hundreds and thousands who settled near that prospective line, in the earnest hope that the iron horse would reach their neighborhood, are to be cut off from aid if the present company fails. Turn the argument as you will, demand retrenchment and reform in the most economical sense, and if you are in earnest about it, increase the number and value of the subjects of taxation, and you will not only increas eyour revenues, but will bless the people and relieve the burdens of the individual taxpayers."

MR. ROBERTSON, of Bell, followed Mr. Flournoy in favor of the Arnim amendment.[45]

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[45] This speech was published in full in the *State Gazette* (Austin), October 6, 1875. Bell County is in Central Texas.

Mr. Robertson said: "Mr. President, I do not favor the amendment with a view of doing an injustice to a portion of this State and favoring another portion, and should not vote in favor of it, if I did. I believe it will be in accordance with the true interests of the country to insert the clause as proposed. With regard to the 'policy'—as it was termed yesterday by the gentleman from Anderson—the policy of Texas adopted in 1854 was not so objectionable, if it had been properly carried out. The policy of the fathers of this country was to secure actual settlements on the lands donated. That has ever been the policy of the American idea; they coupled it with freedom and our idea of suffrage to make the voter independent. He might probably appreciate the blessings of government. Give him something to defend; identify him with the soil of the country. That was the idea uppermost in the minds of those who opened up this country for settlement. Actuated by such a view the fathers of the country in 1854 consented to a policy, providing that the lands should be taken in alternate sections for the encouragement of works of internal improvement, the alternates to be reserved to the State for educational purposes. This was done, as I said before, not so much to benefit railroads as to induce actual settlement, to induce people to settle upon the lands adjacent to the railroads, to sustain themselves and defend the country from its enemies; and strictly regarding the provisions of that law we today would not be discussing the advisability or otherwise of continuing a policy of donating lands to railroads. That policy has not been adhered to. That policy required a disposition of lands in six, eight, ten, or twelve years, and it was supposed that they would pass into the hands of actual settlers. Further provisions retained the right to control these railroads that were to be incorporated under law, so that each section of the country would be equally benefited along the line. It will be remembered by gentlemen familiar with the history of these railroads that they were all to terminate upon the Gulf coast, on the bays thereof, on Buffalo Bayou, to run centrally through the country from the coast to the mountains, so that each section of the country bordering along the line might be equally benefited. Mr. Reagan said, the gentlemen will remember the fact, that the first charter granted to a railway corporation in the State was to the Southern Pacific in 1854, which was run from east to west and terminate at El Paso, and was intended to mutually benefit the whole section along its entire route.

"One section of the law of January 13, 1854, as found in Oldham and White's *Digest*, page 371, reads as follows: 'And such donations shall be discontinued in every case where the company or companies shall not construct and complete at least twenty-five miles of the road contemplated by their charter, each year after the construction of the first mentioned twenty-five miles of road; and further provided, that the proviso herein contained shall not extend to any railroad, the terminus of which is not fixed on the Gulf coast, the bays thereof, or on Buffalo Bayou, and that nothing in this section shall be so construed as to extend the duration of *any existing charter;* and further provided, that the certificates for land issued under the provisions of this act shall not be located upon any land surveyed or titled previous to the passage of this act; and further provided, that this act shall continue in force for the term of ten years from the time that it shall take effect, and no longer.'

"Another section reads as follows: 'Any railway company in this State, acquiring lands or other real estate by virtue of the provisions of this act, or by virtue of the provisions of any other act or charter enacted by the Legislature of the State of Texas, by purchase, donation, or otherwise, shall proceed to alienate the same, except so far as may be necessary to the maintenance and running of said road, in six, eight, ten, and twelve years; that is, one-fourth shall be alienated in six years, one-fourth in eight years, one-fourth in ten years, and one-fourth in twelve years from the time of acquiring such lands or real estate in such manner; that the whole of such lands or real estate shall pass out of the hands of such company within twelve years from the date of acquisition; *provided,* moreover, that said lands and real estate shall in no instance be alienated to any other corporation, except so far as may be necessary for the proper uses and the conduction of the business of such corporation.'

"I claim that the people were justified in putting a provision of this character into the charter of the railroad companies to whom they granted privileges. That was the policy of that day and if the fathers who inaugurated it were here today they would vote as I intend to, to stop a policy that is not correct in principle, because it confers no corresponding benefits and possesses separate and exclusive privileges. I do not speak in behalf of one section to the exclusion or injury of another. I know but one Texas, and never by my vote shall there be but one Texas. I know the feeling entertained upon the subject by the west, but I know also the views entertained upon this subject by my constituents and I would be recreant to that duty if I failed to express the views which they entertain in regard to the policy of continuing to donate lands as a subsidy to railroads.

"We have been taught by this system of land donations to corporations from the experience of the past what we may expect from the future. They started out with a very strong law in 1854, and if they had adhered to it strictly no harm would have been done to the country, but it would have been benefited thereby. But extension of time has been granted again and again, until the law has become virtually neutralized, until the people have become firmly rooted in their opposition to the extension of a policy which has not brought the benefits contemplated by the framers of the measure. They provided in addition to the donation of sixteen sections to the mile that the school fund might be loaned to railroads, as was said by the gentleman from Collin, to complete railroads running east and west of the Trinity, amounting to $6,000 to the mile. But in a short time this was found to be insufficient, and another demand was made for $6,000 to the mile of graded, not completed road, and one demand has been made after another until the people have been forced to the conclusion that they must be stopped, because they fail to give that protection to the country its friends claim for it. It has been claimed that it would act as a cordon for the protection of our frontier. Yet we are called upon year after year for appropriations to defend the frontier. Are the railroads doing it? If so, I would like gentlemen who favor the policy to tell us how. No, sir; it is not protected by the railroads, but by the stout hearts of strong men who have ever stood upon the soil of Texas defending her with money and without money against the foe, and never hesitated to cast their lives into the scale when liberty was assailed. No, the record of Texas is found in the patriotism of her sons. No, it was not your railroad system who defended her, but the men of 1836, the men of the Rio Grande, the men of the western border, aided by the men of the middle and eastern portions of the State.

"Our lands are gone; our school funds are gone, and yet we are called upon to extend this thing. I am willing to accord to every section of this State what in justice belongs to them, and I shall not blame any man on this floor for representing his constituency, but I cannot give my consent to trust future Legislatures with the extension of a policy that has been so detrimental to our interests. Past legislation not only granted donations of land, but fastened upon the people of Texas $12,000,000 in direct taxation, the payment of which has only been avoided by a compromise of lands freed from taxation for a long period of years. It is perhaps owing to this departure from the policy of the fathers that has ruined the system of land donation to railroads and destroyed the interest in them heretofore felt by the people. With such a record in the past, what may we not expect if we leave the people unprotected in the future?"

MR. J. W. BARNETT, of Parker, spoke briefly in favor of a compromise. He favored the donation of lands to one grand trunk line which would run through the West. He said these appeals to the memories of the past on either side was no argument. We came here to make a Constitution for the future glory and greatness of Texas, and should do so calmly and dispassionately. He hoped that no acrimony would be engendered, as had been done in times past in these very halls. We should rise to the majesty of the occasion, and meet the issues presented as statesmen and patriots. He was a compromise man.

MR. DOHONEY was opposed to the amendment. He said the State should not change her long established policy of aiding works of internal improvement, without good and sufficient reason. He would admit that this right had been abused by the last three Legislatures, but the friends of the amendment should correct these abuses and not strike at the policy itself. He would do all in his power to correct these abuses, but he was not in favor of prohibiting the Legislature from aiding works of internal improvement in a legitimate and proper manner. The policy of granting aid to works of internal improvement, actually constructed, inaugurated in 1854, was a true policy, and one that was wise and statesmanlike.

MR. WEST said he did not think that this Convention could decide this matter intelligently until after the report of the Committee on Education and Public Lands. There was no need of hurry in this matter, and he would, therefore, move to pass over the proposed amendment for the present.

MR. GERMAN was opposed to the motion. He said the members had their minds made up—many of them were determined upon the course they would pursue before they left home. This matter had been discussed on the hustings in the Twelfth, Thirteen, and Fourteenth Legislatures. It was nothing new. "Time, time" was always being called for by the advocates of railroad measures. Be careful how you grant time. The fight was the people on one hand, and the railroad rings and monopolies on the other.

MR. RUSSELL, of Wood, introduced an amendment as follows: "Provided this clause shall not be so construed as to prevent actual settlers from preëmption privileges."

MR. FLOURNOY offered a substitute as follows: "In line 264, insert the words 'or land' after the word 'money,' and add to the end of the section the following words, "or of portions of public domain for internal improvements, or to actual settlers by general law alone."

## TWENTY-THIRD DAY

### FRIDAY, OCTOBER 1, 1875[46]

(The twenty-third day of the Convention was without debates. Committee reports and new resolutions, referred to the proper committees, consumed the day.)

## TWENTY-FOURTH DAY

### SATURDAY, OCTOBER 2, 1875[47]

### *The Legislative Article*

JUDGE REAGAN moved to strike out "three-fourths" and insert "two-thirds" in Section 1, on the mode of calling a convention and amending the Constitution of the State by the Legislature. He explained that he thought it ought not to be left to one-fourth of the legislative department to defeat the will of the people when they desired the calling of a constitutional convention. The amendment was adopted.

MR. J. W. STAYTON, of Victoria, moved to strike out after the word "favor" in line ninteen all of the clause, and to add so it would read as follows: "If it shall appear from said return that a majority of the votes cast upon said amendment shall be cast in favor thereof, the same shall be valid to all intents and purposes as a part of the Constitution of the State of Texas, and the same shall be so declared by a joint resolution of the Legislature at the first session thereof after such election."[48]

MR. BROWN claimed that the section as reported by the committee only threw an additional safeguard against hasty amendments to the Constitution, and opposed the Stayton amendment.

MR. STAYTON said his purpose was to prevent the will of the people from being defeated by one-third of the Legislature. Such a power conferred upon the agents of the people was utterly at war with the whole theory of our Government. After the people had expressed their will in a manner provided by law, he saw no valid reason why it should be placed within the power of the Legislature to defeat this will. It was not probable that people would vote for amendments to the Constitution which were not acceptable to them.

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[46] The proceedings for this day were found in the *State Gazette* (Austin), October 2, 1875.

[47] The proceedings for this day were taken from the *State Gazette* (Austin), October 3, 1875.

[48] The committee report provided for ratification of proposed amendments by a two-thirds vote of each house of the Legislature after favorable action by the people at the ballot box. Mr. Stayton proposed to eliminate the ratification by the Legislature after the amendments had been accepted by the people.

JUDGE BALLINGER thought the amendment was a judicious one, and said it had his earnest support. The position, that while the people might remodel their Constitution on a vote of two-thirds of the Legislature calling a convention, while it would take two years to secure an amendment, was anomolous. The Legislature had first to propose an amendment, it had next to be adopted at a general election, and then had to be ratified by a succeeding Legislature. It was an anomoly which might drive the people to the necessity and expense of calling a constitutional convention to accomplish that which might be secured by amendment.

MR. BROWN said he did not so regard it. The difference in time would be only about two months, the time intervening between the general election and the meeting of the Legislature. He again said that it was a great safeguard against hasty and injudicious amendments.

MR. T. G. ALLISON, of Panola, moved to strike out "two-thirds" and insert "a majority," so that it should require only a majority of the Legislature to ratify.

MR. HENRY, of Smith, said that unless it was intended that the Constitution should be changed from time to time he did not think it wise that either of the amendments should be adopted. He thought it unwise for constitutional law to be changed with the same ease as statutory law. Such was not the case with the Federal Constitution. Constitutional law ought not to be subject to every caprice, and some safeguards should be thrown around it.

(Mr. Stockdale in the chair.)

PRESIDENT PICKETT said he regarded the question as one of the most important that would come before the Convention. It seemed to him that the people were just as competent to pass upon amendments to the Constitution as on the Constitution itself. He saw no good reason for submitting the vote of the people on an amendment to the Constitution to the danger of being thwarted by 120 men composing the Legislature, who might be induced by outside influences to act in opposition to the will of the people. It was vicious to incorporate into their Constitution a provision that might lead to the defeat of the will of people when they desired to amend and had voted to amend their Constitution. He intended, at the proper time, to propose an amendment to the first section of the article being considered.

MR. BROWN supported the section as it came from the committee. A similar provision was incorporated in the Constitutions of most of the western and southern states, and he believed it was a wise one. Even the vote for amending the Constitution in 1872, so as to change the charters of the International and the Texas & Pacific from money to land donations—which saved the people $12,000,000 directly—was much smaller than the vote of State officers. It was in such instances as this that the Legislature stood as a very bulwark in defense of the people's interests. He spoke of a case in Missouri in 1834 or 1835, where the people had ratified an improper amendment. The succeeding Legislature discovered the bug under the chip, refused to ratify, and saved the people from the evil consequences of their own act. Like Thomas Jefferson, he was opposed to hasty action. Jefferson was no Red Republican nor yet a Radical—not using it in the sense in which it was applied today—but a friend to popular liberty, and there was nothing in his experience that would lead to the supposition that he was opposed to the principles embodied in the clause proposed by the committee.

MR. WEAVER said that he was no Red Republican in any sense of the word, but he did believe in the powers of government by the people when their will was expressed at the ballot box. He was not an advocate of the theory that the people were always right, and did not adopt the adage that the voice of the people was the voice of God, but he refused to recognize any principle that would set the Legislature up above the people as censors on their action and corrective of their will as expressed at the polls. He would rather risk the people at the ballot box than any Legislature, however democratic, because experience proved, not only in Texas but in all other states of the Union and in the national capital itself, that they might be influenced by improper means, so that instead of protecting the people, like boa-constrictors, they would strangle them. He was entirely willing to trust the intelligence of the people. He was in favor of Mr. Allison's amendment.

MR. EDWARD CHAMBERS, of Collin, supported the original clause. He referred to the stand made by five members of the Legislature, himself among the number, to the ratification of the amendment donating the public lands to works of internal improvement. Judge Harrison, of Van Zandt, was their mouthpiece, and it was through the opposition of these five members that one-half of the public domain was set apart for school purposes and for incorporating into the Constitution that the school fund should be forever held sacred. The people, in their desire to throw off the yoke of $12,000,000, had thrown loose the whole public domain to works of public improvement. The people had not intended for any such principle to be established, but if it had not been for the legislative check, they would have suffered just as much as if they had intended it. While he yielded to no one in his confidence in the people's voice, as was attested by his votes heretofore and would be attested by his votes hereafter, it was possible for cases to arise when similar legislative restriction upon an inconsiderate act of the people might lead directly to their welfare.

MR. L. W. MOORE, of Fayette, moved to strike out of line nineteen the word "of" down to "so" and to insert "either of them" and to strike out all after the word "Texas" and add, "the Governor shall by his proclamation so declare." He thought the will of the people should be declared as soon as it was ascertained by the proper officers of the people. He agreed with Judge Ballinger that it was contradictory that one-third of the Legislature should have power to defeat the will of the people, while on a vote of ratification of a new Constitution their will would be supreme. The objects of both amendments seemed to be to compel the agents of the people to do the will of the people. He proposed to take all danger of wrongdoing away from them, and have the Governor declare what the will of the people was, and let that be the Constitution, or the amendment, whichever the case might be.

MR. RUSSELL, of Wood, opposed both amendments. He said he thought the original clause contained a very wise safeguard and would support it with his vote.

JUDGE BALLINGER offered the following as a substitute for both amendments, and for the whole clause: "Section 2. The Legislature, at any biennial session, by a vote of two-thirds of all the members elected to each House, to be entered by the yeas and nays on the Journals of both Houses, may propose amendments to the Constitution to be voted on by the qualified electors for members of the House of Representatives, which proposed amendments shall be duly published once a week for four weeks, commencing at least three weeks before the election, the time of which shall be specified by the Legislature in one weekly newspaper of each county in which such newspaper may be published, and it shall be the duty of the several returning officers of such election to open the poll for and make return to the Secretary of State of the number of legal votes cast for and against said amendments, and if more than one be proposed, the number of votes cast for and against each of them, and, if it shall appear from said returns that a majority of the votes cast have been cast in favor of any of the said amendments, the said amendments receiving the majority of the votes cast, shall become a part of the Constitution, and proclamation of the same shall be made by the Governor."

JUDGE BALLINGER said the substitute was proposed for the express object of enabling the people to amend the Constitution of the State with the utmost facility, and in a way, he thought, that would not be liable to irrational or dangerous precedent. He believed that this was the true method of perfecting constitutions. It was precisely the same mode as was adopted for remodeling or of reconstructing the Constitution, and was, in his opinion, the correct mode. He had read the Constitutions of other states, and did not regard this as an experiment or as an unusual measure. On the contrary, he would make it the duty of members of the Supreme Court to suggest amendments to the Constitution. The Constitution, he thought, should be under the active and careful supervision of the people, and they ought to be able to change it with reasonable facility. Mere party matters were not the only things that should affect Constitutions. Parties were made on the evanescent questions of the day, but when any provision of the Constitution was found to work hard upon the people, or was defective, the public judgment should be allowed to take such direction as would provide amendment to it, and such amendment should be made with facility and dispatch. He need not say that he was not a Red Republican, and that he expressed no extreme anxiety in the making of a Constitution, but in matters of that sort the will of the people should be supreme.

MR. ROBERTSON said the question appeared to be simply whether they should give the Legislature or the Governor the power of examining the election returns. The provision in the clause reported was about the same as in the Constitution of 1845, namely, that two-thirds should propose amendments and that two-thirds should look over the local returns and declare whether the election was properly held, but not to declare whether the amendments were proper to be made Of the two he should be inclined to vote for the amendment of the gentleman from Victoria.

MR. WEST warned the Convention against hasty action on the matter. It seemed that the Constitution ought not to be degraded to the level of an ordinary statute. He differed in toto with those who thought a change in the instrument ought to be made with every change in the moon. He believed it should be changed deliberately, submitted to the people on a two-thirds vote of the legislative department, or at least a majority; that it should again be submitted to a Legislature, because the people are not infallible, and make great mistakes sometimes, and these mistakes can be rectified only in the manner proposed. There had never been an election at which two-thirds of the people voted for an amendment. He thought there should be a *locus penitentiae*—a place of repentance—and time to consider their action. Such had been the usual mode of correcting institutions. He hoped the Convention would stand by the committee, for he believed it was the wisest and safest course.

MR. DEMORSE said it seemed to him that the proposition of Judge Ballinger was the most dangerous of anything yet submitted to the Convention, but others of them remembered that the people seldom paid attention to the matter unless the proposition was to change the Constitution entirely, or to create a new one. One-half of the people might not take any interest in the amendments submitted to them, and one-half might vote for amendments submitted to them which might be dangerous to their interests, but, under the amendments proposed in the Convention, the thing was virtually ended and complete. It carried with it no more dignity than a county election.

All the fathers had provided safeguards to prevent sudden changes in the organic law. The greatest departure he was willing to make to the established usage was that a majority of the Legislature should record the will of the people. He had no fear that the Legislature would ever dare to oppose the will of the people, and he looked upon their approval as a mere formality, designed to protect rather than to injure the people. Mr. Brown had instanced a case in Missouri where the people would have been greatly injured but for this precaution of the legislative safeguard. Such instances might arise in Texas, but no harm could arise from a submission of the matter to the people.

PRESIDENT PICKETT opposed Judge Ballinger's substitute. He repeated his former arguments, strengthening them with additional reasons.

MR. WAELDER said he did not regard the action of the Legislature in passing upon the vote of the people as a mere formality. He thought that it was rather an action intended to protect the people and prevent an improper vote. He trusted, therefore, that the amendments would be defeated.

At this point the substitute was put to a vote and was passed, having 39 yeas to 34 nays.

PRESIDENT PICKETT moved to strike out Section 1, and supported his motion with a speech. The effect of the section was to provide the means of calling a convention by two-thirds of the Legislature voting for such a call. This was the only mode of calling one. He denied the right of the Convention to bind the people of Texas, or to take from them the liberty to alter, amend, or abolish their Constitution.

MR. MCCORMICK offered the following as a substitute for the section: "The people of this State may call a constitutional convention at any time and in any manner in which the majority of them may express by their voice at the ballot box, and no law shall be passed curtailing or preventing the exercise of this great and inalienable right."

PRESIDENT PICKETT accepted the substitute.

MR. FLOURNOY offered a substitute providing that the question of convention or no convention should be submitted to the people once in every ten years, the mode of ascertaining their will to be in such manner as prescribed by law, but the foregoing not to be construed as interfering with the right of the people to assemble in convention whenever they so will it.

MR. MARTIN, of Navarro, moved as an amendment to the above to strike out "ten years" and insert "twenty years."

JUDGE REAGAN followed with an able speech in support of the amendment of President Pickett. He said it was the inalienable right of the people to meet in assembly or convention whenever they so desired, and that it was not within the power of any Legislature to limit them in this right.

MR. NUNN opposed striking out Section 1. As he understood the object of those favoring it, it was to withdraw from the regular administration of the Government the power of providing a regular and lawful mode of calling a constitutional convention, or to amend their organic law. Their argument seemed to be that there was an inherent power in the people which they might put in operation whenever they deemed best. He was not prepared to contradict it, thought it might lead to overturning the Government, but it would be in a revolutionary way. He denied that the Legislature and the Government of the State, elected by the people, constituted a foreign power or would seek to perpetuate or force upon them an odious rule. The Convention could not have assembled except in obedience to the popular voice, and it was so with their Legislature. He could conceive of a case where the Legislature might seek to disregard the will of the people, but not under the restrictions imposed by the section it was sought to strike out. The action of the committee had been taken only after mature, deliberate, and careful thought on the subject. He trusted their labors would not be in vain, and that their judgment would be sustained by the Convention.

MR. ASA HOLT, of Van Zandt, called for the previous question, which was ordered.

Mr. Martin's amendment was lost.

Mr. Flournoy's substitute was lost.

Mr. McCormick withdrew his substitute by leave.

President Pickett's motion to strike out the section carried by a vote of 49 to 24.

MR. DOHONEY offered the following as Section 1 of the article:

"SECTION 1. The Legislature may at any regular session, by a vote of two-thirds of all the members of each house, pass a joint resolution, to take the sense of the qualified electors of this State, at the next succeeding general election, upon the proposition to call a constitutional convention; and if at such election a majority of those voting vote in favor of calling a constitutional convention, the Legislature at the next succeeding session shall pass a joint resolution calling a constitutional convention; which convention, when it shall assemble, shall frame a Constitution and submit the same to a vote of the qualified electors of the State for ratification or rejection; and if a majority of those voting at that election shall vote in favor of the ratification of said Constitution, it shall, by proclamation of the Governor, be declared the Constitution of the State."

MR. DEMORSE offered the following as a substitute for Mr. Dohoney's substitute for Section 1:

"The Legislature, by a majority of all the members, shall have the power to suggest and provide by appropriation for a convention of the people for the purpose of creating a new organic law, and shall submit the proposition to a popular vote; and, a majority of the people approving, the succeeding Legislature shall, by a majority vote, recognize their will, and provide that no general election shall be held until the convention shall have assembled and provided therefor to suit the exigency; but this election shall not be considered as in any degree questioning the sovereign right of the people to assemble and create organic law, without authorization from any legislative body, and by such means as they prefer."

JUDGE REAGAN moved to lay both substitutes on the table.

MR. MURPHY moved to adjourn until 9 o'clock the next morning. The motion to adjourn was lost.

Judge Reagan's motion to lay the substitutes on the table was carried by a vote of 48 yeas and 24 nays.

## TWENTY-FIFTH DAY

### MONDAY, OCTOBER 4, 1875[49]

MR. DOHONEY presented the petition of Mrs. G. W. Hyatt, of Eldorado, praying for woman suffrage as a "legitimate application of Democratic principles."

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[49] The proceedings for this day were taken from the *State Gazette* (Austin), October 5, 1875.

Mr. Martin, of Navarro, made a furious onslaught against woman suffrage. He said the Alabama Convention had transacted its business and adjourned, and if such a question as this—the discussion of the right of a woman to a husband, a new bonnet, a baby, and a cradle—was to be injected into the Texas Convention, there was no knowing when they would finish their work.

Mr. Dohoney spoke for the reception of the petition and its reference to the Committee on Suffrage. He felt that the humblest citizen had the right to ask that much. Opposition to the measure advocated in a petition was no justification of a refusal to hear a petition sent up in a respectful manner.

Mr. Weaver seconded the remarks of Mr. Dohoney. He felt that the very least the Convention could do was to refer the petition to the Committee on Suffrage.

Mr. W. Blassingame, of Grayson, entered a vigorous protest against either receiving the petition or entering it upon the journals of the Convention.

Mr. DeMorse defended the position taken by Mr. Dohoney and Mr. Weaver. He repeated that the petition of the humblest citizen was entitled to careful consideration.

Mr. Stockdale was of a similar opinion. He thought the duty of the Convention was clear in the case being considered.

General Whitfield said he agreed with Governor Stockdale. He was of the opinion that the Convention could not afford not to consider the petition of any citizen, regardless of the subject presented, if it were presented in a respectful manner.

Mr. W. W. Dillard, of Bowie, moved the previous question, which was ordered, it being, shall the petition be rejected? It was lost by a vote of 32 ayes to 41 nays, and the petition was then referred to the Committee on Suffrage.

Mr. Murphy proposed clauses in addition to the legislative article which had reference to the organization of the militia, giving the Governor power to call out the militia to repel raiders.

Judge Reagan thought the subject had been covered by the clause giving the Governor power to suppress insurrection and repel invasion.

MR. MURPHY said the effect of his proposition would be merely to authorize the militia of the Nueces being called out to repel raiders, and not that of the whole State.

JUDGE REAGAN objected to the word raiders. He said he had never known it used in connection with a Constitution. He requested Mr. Murphy to withdraw his motion.

Mr. Murphy withdrew his motion.

MR. NUNN called up his motion to reconsider the vote taken on the motion of Mr. Davis, of Brazos, with reference to State colleges and universities. The Convention had refused to add to the list of institutions for which the Legislature might appropriate public money, State colleges and universities.

MR. B. H. DAVIS, of Brazos, spoke somewhat at length as follows:[50]

"Mr. President, I am satisfied that this Convention did not understand the object I had in view in proposing the amendment and did not understand the effect of Section 48, as it now reads, upon the educational interests of the State. By that section it is seen that the Legislature is prevented from making any appropriation hereafter for colleges or universities; it is prohibited from imposing any tax whatever on the people for any other objects than those specified in the section. I proposed my amendment, Mr. President, for the purpose of empowering the Legislature in the future to make such appropriations as might be found necessary for the support of colleges and universities under the control of the State. I believe that it was necessary and I believe still, that if Section 48 is adopted without the amendment and without giving further power to the Legislature, it will have the effect of destroying the only institution of learning the State now has under its control. I refer to the Agricultural and Mechanical College. If it is permitted to stand as it now reads and as passed by this Convention, notwithstanding the very large grants of money and land scrip heretofore made to that college by the State and general government, it will cease to exist. All the expenditures made by the State—amounting to $131.000—for the erection of the principal college edifice and the other buildings attached thereto, will be thrown away, and these buildings will stand as a stupendous mass of brick and mortar, utterly worthless to the State. Let me explain the status and condition of that college as affected and controlled by the act of Congress under which it was founded, in order that the Convention may have a clear conception of the matter in voting for a reconsideration of the vote upon my amendment. I am satisfied that when they understand the question they will see the propriety of adopting the amendment.

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[50] Mr. Davis' remarks are taken from the *State Gazette* of October 9, 1875.

"The college was founded under an act of Congress of 1862 giving to each of the states of this Union 30,000 acres of land for each Senator and Representative in Congress to which they were entitled, and requiring of them the establishment of an Agricultural and Mechanical College for the purpose of affording a liberal education to the agricultural and industrial professions of the State, requiring also that the grant should be accepted and the college established within five years from the passage of the law. By a subsequent act of Congress, passed in 1866, the provisions of the law were extended for five years, and under these provisions the State of Texas in 1871, by an act of the Legislature, accepted the terms of the grant and by the same act established the Agricultural and Mechanical College of Texas, now located in the County of Brazos. By accepting this donation of Congress, the State of Texas received $180,000 in land scrip of the United States. That land scrip was sold by the Secretary of State in 1871, and the money invested in $174,000 of Texas frontier bonds, bearing 7 per cent interest, which bonds, with coupons attached, are now in the State Treasury, and the interest thereupon now amounts to $40,000, making a total amount due the Agricultural and Mechanical College of $214,000. If we prevent additional appropriations to the college it cannot be completed and put into operation, and we not only lose this money in the Treasury, but all the expenditures that have been made in the erection of college buildings, amounting to $131,000, together with 2,290 acres of land, purchased by the citizens of Brazos, for which they paid $22,000, and donated to this State, upon the condition that the college should be located thereon, making a total of $367,000, which I say, Mr. President, the State will surrender up and throw away at once—under the provisions of the act of Congress by which the grant of land was made to the State. Let me draw the attention of the Convention to the provisions of that act. I read from the fourth section of the act of Congress of 1862, which is as follows:

" 'Section 4. *And be it further enacted,* That all moneys derived from the sales of the aforesaid lands by the states to which the lands are apportioned, and from the sales of land scrip hereinbefore provided for, shall be invested in the stocks and bonds of the United States, or of the states, or some other safe stocks, yielding not less than 5 per centum upon the par value of said stocks; and that the moneys so invested shall constitute a perpetual fund, the capital of which shall remain forever undiminished (except so far as may be provided in Section 5 of this act), and the interest of which shall be inviolably appropriated by each state which may take and claim the benefits of this act, to the endowment, support, and maintenance of at least one college, where the leading object shall be, without excluding other scientific and classical studies, and including military tactics; to teach such branches of learning as are related to agriculture and the mechanic arts, in such manner as the Legislatures of the states may respectively prescribe, in order to promote the liberal and practical education of the industrial classes, in the several pursuits and professions of life.'

" 'Section 5. *And be it further enacted,* That the grant of land and land scrip hereby authorized shall be made on the following conditions, to which, as well as to the provisions hereinbefore contained, the previous assent of the several states shall be signified by legislative acts:

" '1. If any portion of the fund invested, as provided by the foregoing section, or any portion of the interest thereon, shall by any action or contingency, be diminished or lost, it shall be replaced by the state to which it belongs, so that the capital of the fund shall remain forever undiminished; and the annual interest shall be regularly applied without diminution to the purposes mentioned in the fourth section of this act, except that a sum, not exceeding 10 per centum upon the amount received by any state under the provisions of this act, may be expended for the purchase of lands or sites for experiment farms, whenever authorized by the respective Legislatures of said states.'

" '2. No portion of said fund, nor the interest thereon, shall be applied directly or indirectly, under any pretense whatever, to the purchase, erection, preservation, or repair of any building or buildings.'

" '3. Any state which may take and claim the benefit of the provisions of this act shall provide, within five years, at least not less than one college, as described in the fourth section of this act, or the grant to such state shall cease; and said state shall be bound to pay the United States the amount received of any lands previously sold, and that the title to purchasers under the state shall be valid.'

"Now, Mr. President, it will be seen that this grant was given to the State of Texas under three conditions, first, that the grant should remain forever undiminished; second, that the interest alone should be applied to the support and maintenance of the college and neither principle nor interest should be applied to the erection or repairs of the buildings; third, if this college should not be established within four years of the date of acceptance, or if for any cause whatever the State should abandon it, then the State is compelled to pay back to the United States the money raised on the scrip granted to the State. Now, sir, what is the effect of this Section 48, as it now reads, upon this college? By the provisions of this section the Legislature can make no appropriation for the erection and completion of the buildings necessary to put the college into operation, because it is prevented from imposing any tax to meet such appropriation. And, sir, in the condition in which the college now is, it is necessary that additional appropriations be made. While the principal edifice is completed, and the President's Mansion and Steward's Hall nearly so, yet, sir, it is necessary, as is shown by the message of the Governor to the second session of the Fourteenth Legislature, that additional appropriations should be made at once, in order to erect other necessary buildings to put the college into successful operation. I read from the message of the Governor:

" 'The report of the Board of Commissioners, who, under the legislation of Texas, are charged with the administration of the finances of this institution, and with the supervision and direction of the construction of the college buildings, is herewith submitted for your consideration. It appears from this report that the college edifice is rapidly approaching completion, and that in order to complete it fully an additional appropriation of $7,000 is necessary. These commissioners ask an appropriation of $25,000 to erect a boarding hall, $21,000 to erect three professors' dwellings, and $5,000 to lay off and fence grounds, make walks, plant trees, and erect a barn. I respectfully recommend that these appropriations be made as suggested in this report, being satisfied that they are absolutely essential, and that the appropriation heretofore made is being economically and honestly administered.'

"Now, Mr. President, it will be perceived from the Governor's message that the commissioners of the college asked for an appropriation of $7,000 to complete the principal college edifice; $25,000 to erect a boarding hall; $21,000 to erect three professors' buildings; and $5,000 to lay off and fence grounds, make walks, plant trees, etc.; and the Governor recommends that these appropriations be made, aggregating the sum of $58,000, being satisfied, as he says, that they were absolutely necessary and essential to make the necessary improvements required to put the college in successful operation. The Legislature, in response to this recommendation, appropriated only $32,000, which was known at the time to be not sufficient to make the necessary improvements. The Legislature left a deficit in the appropriations asked for of $28,000, but I am compelled to say, for the information of this Convention, that in this sum was not included the necessary appropriation for seats and desks, without which the college could not be put in operation.

"And it will require an additional appropriation of at least $30,000 to complete and furnish the buildings still necessary to utilize what has already been done.

"I have shown, Mr. President, that $131,000 has been expended in the erection of buildings for this college; that land to the value of $22,000 has been donated to it by the citizens of Brazos County;

and that it has a fund of $214,000 of State bonds in the Treasury, making a grand total of property of the value of $367,000 belonging to this college. And I have shown, sir, that this large amount of property can be utilized, and a college established second to none in the South, affording a practical and scientific education to the sons of toil in this broad State, for the paltry sum of $30,000.

"Now, sir, I ask this Convention, will you refuse to reconsider your vote and adopt my amendment? Will you thus destroy this college and throw to the winds all of the property belonging to it, and through it to the State of Texas? Will you deprive the people of the benefits and advantages of the only institution of learning they have, or will ever have, if this section is not changed? Can we, sir, send before the country with any hope of satisfaction, a Constitution impressed with this penny wise and pound foolish, policy? Can we say to our constituents that we have thrown away this vast amount of property, because we were afraid to trust future Legislatures with the power of making appropriations to the amount of $30,000 to sustain this college? Why, sir, are we so jealous and suspicious of future Legislatures? Why do we have this remarkable animosity to them?

"Is it because we have exhausted all of honesty, wisdom, and patriotism in this body politic, and that the people will hereafter be incapable of self-government, incapable of electing honest, capable, and patriotic members of the Legislature? Whether we believe this or not, we are making a Constitution, sir, which in this legislative article, will reflect it upon the people. And I tell this Convention that this policy will not commend itself favorably to the people of this State, and to a favorable vote on the adoption of this Constitution. We cannot go before the country with a Constitution which has crushed out forever the establishment of colleges and universities for the education of the youths of Texas. We cannot ignore, in the Constitution we may make, an educational system, either in the lower or the higher branches of learning; and when, sir, by constitutional provisions, we so tie the hands of future Legislatures that they cannot encourage a proper system of education, we strike down, sir, one of the strongest pillars of free government.

"Intelligence and morality go hand in hand, as do ignorance and vice. The great fundamental principle of our system of government is that it rests upon the will of the people; but, sir, its stability and prosperity must depend upon the still greater underlying principle, the intelligence and virtue of the people; and whenever by a policy of hostility to legislation upon the subject, we crush out a proper educational system in the State, then, sir, I say we strike down one of the main pillars upon which this government depends for its future prosperity.

"Now, Mr. President, I, as a delegate to this Convention, stand here pledged to retrenchment and reform. I come here from a constituency who have cried out for it as loudly as any in the State, and I will go as far as any one to accomplish it, provided it does not come in conflict with the still greater duty devolving upon us of securing good government for the people.

"We can effect retrenchment and reform, but we should act the part of statesmanship in doing it. We should seek reform in those subjects which in themselves are calculated to produce fraud and corruption in legislation. There are many sources of corruption, and whenever we find a subject which may be brought to the door of the Legislature, and which is calculated, however honest the Legislature may be, to corrupt its legislation, then I say, let us put it down with the strong hand of the Constitution. We see these sources of corruption in private corporations, railroad charters, monopolies of every kind, and a hundred different subjects. And I will strike hands with any gentleman on this floor in striking out such sources of corruption, by the strong arm of this Constitution. Further than this I am unwilling to go, nor should any one else wish to go further. It is not the part of wisdom or statesmanship to wish to go further. I believe in the power and capabilities of the people for self-government, and that there is yet some patriotism and virtue left with them, and that they will in the future be able to send some worthy representatives to the Legislature, men worthy of their confidence. I hold, sir, that as few restrictions and limitations should be placed upon the legislative power of the people as is consistent with an honest administration of the government.

"Now, what is there on the subject of education calculated to corrupt the future Legislatures? Where are the parties who are to bribe legislators to establish schools and colleges? The people alone are interested in this matter, and must we assume that they will bribe their own Legislature to furnish them with a system of education? No, sir, let us not tie the hands of our future Legislatures, but leave them untrammeled, to establish without restraint, in this great empire state of ours, an educational system that will keep pace with the systems of other states and other governments that have raised them to greatness and to the highest eminence in the scale of nations. Witness Prussia, which alone and distinctive of all other governments, possesses the most perfect system of education. This government, sir, has continued to rise step by step in the scale of nations and in power and greatness, until she stands today the most powerful government upon the globe and defiant to world, and her people represent the highest type of humanity on earth. To what does she owe her greatness? What, sir, but her perfect system of education? Strike that down and she will retrace her steps from her proud position, in the direction of a San Domingo, with perhaps the same rapidity which has marked her rise to greatness.

"Sir, an earnest cry has been heard in this very Convention from delegates representing various sections of the State to relieve them from the misrule of ignorance and its concomitants, hatred and malignity, and we are called upon to shape legislation, sir, in their behalf. Are we, sir, to shut our eyes to this condition of things in our own midst and fail to provide for its correction by future legislation in the establishment of a proper system of education? No, sir; let us meet this question like men, and like statesmen, and leave our Legislatures untrammeled to provide for the education of the people, and my word for it—I know the sentiment of the people of my district—not one murmur will be heard against it."

MR. DEMORSE said he was strongly in favor of the views expressed by the delegate from Brazos, and that he would vote for the amendment offered if it were not coupled with any other matter.

MR. ROBERTSON said he hoped Mr. Davis would consent to have his plan to support higher education in Texas separated from the legislative article, otherwise he could not vote for it.

The vote was reconsidered, and Mr. Davis' amendment to add after the word "schools" in line 246, "and colleges and universities under the control of the State," was before the House.

MR. FLOURNOY moved to add to the amendment, "to cost no more than $40,000 in the aggregate, to be applied to the completion of the State Agricultural and Mechanical College."

MR. DEMORSE offered a substitute to the amendment, to add after "schools" "and the maintenance and support of the Agricultural and Mechanical College of Texas."

MR. STOCKDALE supported this amendment, praising both its purpose and the form in which it was arranged.

COLONEL CRAWFORD opposed the amendments. He objected to the clauses which offered support to the Agricultural and Mechanical College, and gave no promise of support to other prospective institutions of higher learning. He reminded delegates that there was a university fund, and said that it was the hope of many enlightened citizens that Texas would soon have one university at least. He hoped that the whole matter would be referred to a special committee for study and a report.

JUDGE BALLINGER moved to add Mr. DeMorse's amendment to line 248, just after the word "asylum."

**MR. DEMORSE** accepted the amendment.

**MR. DOHONEY** moved to add "and such other colleges, universities, and normal schools as may be established by law."

Mr. Dohoney's amendment was lost by a vote of 27 yeas to 34 nays.

**MR. NORVELL** moved to strike from the DeMorse amendment the words "maintenance and support" and insert "completion and repairs."

Mr. Norvell's amendment was lost by a vote of 25 to 32.

**MR. STAYTON** moved to add after "schools," "in which shall be included colleges and universities established by the State."

**MR. RUSSELL**, of Wood, moved to postpone until after the Committee on Education had reported, but was ruled out of order.

Mr. Stayton's amendment was adopted.

Mr. DeMorse's amendment was adopted.

**MR. FLOURNOY** moved to postpone further consideration of the legislative article until one week thence. It was adopted.

The resolution to alter the rule and require nine members to call the ayes and noes was taken up.

**MR. GERMAN** opposed the change, defending the rule as it stood.

**MR. MCCORMICK** favored the change. As had been well said by General Whitfield, the calling of the ayes and nays would cost the State thousands of dollars. It was not only the "ayes and noes" of many members which wanted stopping, but their mouths also. He thought there was entirely too much talk. If members wanted to live up to their professions of retrenchment and reform now was the time to practice it.

**MR. WADE** moved to change the rule so as to read, "six members may call the ayes and noes." His amendment was lost.

The motion to amend the rule, and require nine members to call the ayes and noes, was lost.

### *Executive Department*

The report of the Committee on Executive Department was taken up.

**MR. FLEMING** moved to eliminate the office of Superintendent of Public Instruction.

His amendment was adopted by a vote of 38 to 21.

MR. RUSSELL, of Wood, moved to eliminate the office of Lieutenant-Governor.

His amendment was lost by a vote of 33 to 35.

MR. WEST moved to strike out "except Secretary of State" in Section 2, which would have made the office elective. His motion was lost.

GENERAL WHITFIELD moved to strike from Section 4 the word "two" and insert "four," to make it read, "and the Governor shall hold his office for the term of four years."

His motion was adopted by a vote of 43 to 27.

MR. C. B. KILGORE, of Gregg, moved to strike from line 28 in Section 4 the word "six" and insert "eight," to make it read, "and the Governor shall not be eligible to election more than four years out of eight successive years."

His amendment was adopted.

MR. WAELDER moved to amend the section so that it should read, "he shall not be eligible for more than two terms in succession."

MR. DEMORSE offered as a substitute, "he shall not be eligible for more than two successive terms."

The substitute was declared out of order.

MR. A. C. GRAVES, of Coryell, moved to amend line 28, so that it should read, "he shall not be eligible for more than four years out of six successive years."

His amendment was declared out of order.

MR. MARTIN, of Navarro, moved to reconsider the vote adopting Mr. Kilgore's amendment.

The Convention refused.

Mr. Waelder's motion was lost by a vote of 30 to 32.

MR. JOHNSON, of Collin, moved to strike out "five" in Section 5, and insert "four," so the Governor's salary would be "$4,000 and no more."

MR. WADE moved to strike out "five" and insert "three" adding "in gold."

His amendment was lost.

MR. GERMAN moved to strike out "five" and insert "three."

His amendment was lost.

Mr. Johnson called for the yeas and nays on his amendment.

MR. STOCKDALE said it seemed as if none of the committee were willing to defend their report.

JUDGE BALLINGER said the committee thought the report spoke for itself.

MR. STOCKDALE spoke in favor of the report. He condemned the idea of reducing the salary of the chief executive below that of any other State officer, for whose good conduct he was made responsible. Senators and members of Congress received $5,000 a year and mileage, and could devote their time, when not actually engaged in their official duties, in any occupation they liked, but by a provision of this Constitution the Governor was prohibited from doing this, and rightly so. It was an office requiring the highest order of talent, probity, and integrity, and the very credit of the State, and its future as well as its present honor and glory required that it should not be reduced beyond the figures reported by the committee.

MR. KILGORE moved to amend by striking out "five thousand" and inserting "four thousand and five hundred."

MR. JOHNSON, of Collin, spoke in defense of his amendment. He offered, in case Governor Coke could not serve at the salary provided in his amendment, to serve as Governor himself.

MR. MCCORMICK said that if there was any possible way of getting the last speaker to act as Governor he should be in favor of the lowest possible salary, suggesting that it should not be more $1,000 a year.

Mr. Kilgore's motion to place the salary of the Governor at $4,500 a year was lost by a vote of 12 ayes to 60 nays.

Mr. Johnson's amendment to place the salary at $4,000 was lost by a vote of 35 to 37.

MR. NUGENT moved to strike out "five thousand" and insert "three thousand five hundred."

Upon Mr. McCormick's motion it was tabled by a vote of 43 to 26.

MR. GERMAN moved to reconsider the vote on Mr. Johnson's amendment. He said that the increase in salaries had been due to the difference between currency and specie. Before the war the Governor's salary had been $3,000. Then it had been increased by the Convention of 1866 to $4,000. The Convention of 1869 had raised it to $5,000, which seemed to him a little too much, in fact,

$4,000 seemed a little too much. He had promised his people to demand a reduction in the salaries of officials, and intended to keep his pledge. The position had been filled with men of ability when the salary was $3,000, and he saw no reason to continue the increase over that figure. The position should not be one that men would aspire to for the sake of the money in it, but rather for the honor attached to it.

MR. MCCORMICK said he wanted the Governor of a great State like Texas to be adequately paid, and attacked the record of the last gentleman in the Fourteenth Legislature. He claimed that Mr. German had failed to vote for a reduction of the per diem from $8 per day or for a reduction of the 32 cents mileage, coon tail measurement. It was strange that such a change should come over the spirit of his dream when reduction of the Governor's salary was to be considered.

MR. FLOURNOY said the office of Governor should never be sought as a remunerative one, and a man with the qualifications for Governor could make much more than $4,000 a year, but he thought that the salary—which was $333 a month, together with a house and furniture—was fairly reasonable and ought to be sufficient.

MR. WEAVER said he was not bound beyond his conscientious views in the matter. He was pledged, however, to reasonable retrenchment and reform. Still he thought the salary of $4,000 a year ought to be amply sufficient.

MR. GERMAN replied to Mr. McCormick and defended his record in the Fourteenth Legislature. He said the Journals of that body would show that he had contended as far as mileage was concerned, for $3 for every twenty-five miles; then for $5, and failed again. Members on that floor, as well as the Journals, would bear him out in those assertions, and his voice had always been for retrenchment and reform in the Fourteenth Legislature.

MR. WEST spoke of his experience in Austin during the last twenty-five years, and said he knew he spoke correctly when he said that the salaries of the Governors under the Constitutions of 1866 and 1869, considering the extraordinarily high price of living, were insufficent. A Governor was required not only to be a man of ability, but must also be hospitable, and must be prepared to entertain members of the Legislature, visitors from abroad, and our own citizens. A narrow-minded man was hardly a fit man to be Governor. He referred to Governors Lubbock, Houston, and Coke as examples of inability to save anything out of their salaries. Governor Coke had been compelled to spend $2,000 a year above his salary.

MR. KING defended the report of the committee. He did not think $5,000 was an extravagant salary for the Governor.

MR. P. R. SCOTT, of Cass, moved the previous question, which being ordered, the amendment of Mr. Johnson to reduce the Governor's salary to $4,000 was before the Convention.

JUDGE BALLINGER defended the report of the committee. He said he had no idea that the Governor's office should be sought for profit, but felt that it should certainly be equal to the payment of his actual expenses. He thought the case as stated by Mr. West was conclusive. Governor Henderson, one of the most honorable and noble of men, was compelled to practice law while holding the position of Governor. So was Governor Davis, and he believed he did it from honest motives, and because it was necessary to the support of his family. But the Governor was by other provisions in the Constitution prohibited from practicing his profession. He did not think the executive should be called upon to maintain his office out of his private fortune.

MR. RUSEELL, of Wood, supported the amendment. He said a minority report on the subject would have been presented, but the minority in the committee had desired to avoid burdening the Journals.

COLONEL CRAWFORD spoke against the amendment. He condemned any parsimonious spirit in the matter; he showed the growth of population and the increase in revenues of the State since the date of low salaries. He spoke of the bright-eyed offsprings of some of the past governors, who would have been left in different circumstances had their fathers been as true to their personal interests as they had been to the interests of their country.

MR. ROBERTSON, of Bell, said he voted in accordance with the wishes of his people, and not in any desire to degrade the office of Governor. His constituents desired him to vote for no higher salary than $4,000, and he felt bound by his pledge.

Mr. Johnson's amendment was carried by a vote of 44 to 32.

## *The Frontier Question*

MR. MURPHY moved to amend Section 7, of the executive article, by adding after the word "invasion," "and raiders from the Mexican Republic," which would make it read as follows: "He" (the Governor) "shall have power to call forth the militia to execute the laws of the State, to suppress insurrections, and repel invasions and raiders from the Republic of Mexico."

Mr. Murphy's amendment was lost.

MR. STAYTON moved to add after the word "invasion," "by troops, under the direction or control of other states or governments, or predatory bands therefrom."

JUDGE REAGAN opposed Mr. Stayton's amendment, repeating his former argument, and adding that it might cause confusion between the civil and military powers, especially when the outrages might be committed in whole or in part by our own citizens.

COLONEL FORD denied that there was any ground for supposing that the raids were made by American citizens. The evidence showed that the raiders came from Mexico with repeating rifles and pistols, bearing the mark of the Mexican Government thereon. It was idle to suppose that a sheriff's posse could cope with these raiders who came over in bands of from ten to one hundred, all armed to the teeth. He referred to McNally's gallant fight, where the raiders waited for half an hour on purpose to bring on a pitched battle, and then were defeated. If the clause did not give the Governor any additional powers, it would convey a moral force if inserted in the Constitution which might have a salutary effect, both at home and at Washington.

MR. MCCORMICK said he was in favor of anything that would give protection to the frontier.

MR. MURPHY said he suspected that some members of the Convention were treating the question with cold hearts because they were safely removed from all danger. He pictured some of the horrors of the recent raids in the Corpus Christi region.

MR. FLOURNOY spoke in favor of the Stayton amendment.[51]

He said: "Mr. President, it is the admitted object of government to protect life and property. That is why we are assembled here.

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[51] His speech was printed in the *State Gazette* (Austin), October 22, 1875.

If any portion of the people of this State are endangered in their rights, liberty, and property, it is the duty of this Convention to give the chief executive authority to protect them. That is one of the first objects in view in framing organic law. It is true that life, liberty, and property are endangered on the frontier of this State. That it is endangered is a fact, and in support of that fact let me read the correspondence on this subject between the general commanding the United States forces and James G. Brown, the sheriff of Cameron County:

Brownsville, June 1st, 1875.

GEN. J. H. POTTER, U.S.A.
Commanding Fort Brown, Texas.

GENERAL: I received positive news this morning that a party of men from Mexico were going in the direction of the mouth of the Arroyo Colorado in search of cattle. They seldom remain more than two or three days. Others, with myself, have made three unsuccessful trips, because I had not enough men to station in the rear while I went ahead.

Captain McNelly, of the State Volunteers, left for Corpus Christi last Thursday. Therefore, I am obliged to call on you for assistance, say ten or twelve men for two or three days.

I am, General very respectfully, your most obedient servant,

JAMES G. BROWN,
Sheriff, Cameron County, Texas.

(Endoresement)

Headquarters,
Fort Brown, Texas, June 2, 1875.

Respectfully returned to the Sheriff of Cameron County, Texas, with the remark that, under recent instructions, I am not authorized to furnish troops as asked within.

H. C. MERRIAM,
Major 24th Infantry,
Temporarily Commanding Post.

"Mr. President; the reply is decisive, 'unable under recent orders to oblige you.' What is meant by the power to repel invasion? It means nothing, unless it means the organization and equipment of an army to repel an army. The term contemplates that idea, and therefore, as stated in the original ordinance, it does seem peculiarly appropriate that the Governor of Texas, whom we entrust with the execution of the laws, should be permitted, not to make war, not to invade a neighboring power, but to arm the forces of the State, and to do that temporary work that may be necessary for the protection of the citizens, to call forth such portions of the militia of the State as he deems necessary to protect the lives and property of the citizens of the State. This power may be extensive in its character or otherwise. There is no money mentioned in the original proposition. We must trust the executive in the exercise of prudence in these matters. We already authorize him to repel invasion and suppress insurrection, and what difference is there in fact between raiding on our borders and an armed force marshaled and officered to invade our borders? One has an appearance of grandeur and is awarded a place in history, but it does no more harm and cannot do more harm than these lawless raids have done for years past. There is not a barbaric or civilized power on the face of the globe that would have stood this thing so long as the United States has done without armed resistance. Suppose these raids came from Canada, what would we have done? Why, there would have been peace long ago—yes, even if it had taken war to produce peace. I do not wish Texas to make war. She has yielded the war-making power, but she has not yielded politically and morally the right to use such power as she possesses to protect her citizens in their rights, properties, and liberties. The citizen has no other use for the government except this. For some two hundred miles he is invested with a river which establishes a boundary between him and a foreign power. He, too, pays taxes, and yet must stand at his door with his rifle to protect himself and his family. Shall he look to himself and not to the government for protection? I do not intend to make a speech, but there is a principle behind this. Texas is always suffering from these armed raids. Take our frontier for example. There is no period in our history in which our people have not demanded that their homes be protected from the savage foe. What is the difference between the Mexican and the Indian foe? One comes in predatory bands at the different moons on occasional visits; pretends not to be at peace, but at war, members of a warlike tribe by nature and tradition; and the other holds out his hand in the graps of friendship and pretends to be at peace with the United States and Texas, and yet if gentlemen will only look at the evidence which has been compiled by the officers of the United States Government from American citizens and Mexicans, they will be astounded that no effort has been made by the Government to protect our people along the Rio Grande. And shall we, as citizens of Texas, say that, because a few thousand dollars are expended in giving the protection, because Captain McNally's and other companies will cost about nine thousand six hundred dollars, that they ought not to have it? I say that it is not just to the people of Texas that we should fail to trust the Governor to this extent, to use such part of the militia as may be necessary to punish raiders from Mexico—because to put it plainly, that is what it means—should hesitate to say that the executive shall have power to repel these raids, whether made by large or small parties, shall have the power to protect the poorest as well as the wealthiest, the highest as well as the weakest in life, liberty, and property."

## TWENTY-SIXTH DAY

### TUESDAY, OCTOBER 5, 1875[52]

### *The Executive Article*

The question pending was Mr. Stayton's amendment to add after the word "invasions," in line 44, Section 7, "by troops under the direction or control of other states or governments or predatory bands therefrom."

MR. STAYTON defended his amendment. In the first place, it has been contended that the executive had power, as the section stood, to do all that is asked in the protection of the frontier, whether the amendment became a part of the Constitution or not.

Such was not his understanding of the clause presented in the committee report. On the contrary, he conceived that it would limit the executive to a course of action different from that contemplated in his amendment. As defined by Judge Reagan the word invasion embraced every attack, whether made by troops of an organized government or whether made by predatory bands of foreign territory. Mr. Stayton thought that such a meaning was not generally attached to it, and referred to the legislation of Texas lawmaking bodies in support of his views. He held that the same provision had been in all the Constitutions of the State, as well as in the Constitution of the United States, but was inadequate to the species of protection desired, since the hands of the President and of the Governor were tied down in express language and confined to repelling troops from a foreign government and attacks by invasion. Such was its construction, and it did not go one inch beyond it. They were told that the practical operation of the provision in Texas was different, and that the government then had troops on the frontier and on the Mexican border.

The troops were there in obedience to and under a special law, an act of the Fourteenth Legislature, and not in accordance with any provision of the Constitution similar to that reported by the committee. The object of the amendment was simply to place in the hands of the Governor the power to protect every part of the frontier, even if the Legislature should be derelict in its duty and fail to provide the proper law. At present there was a law authorizing the protection of the border and the Mexican frontier, but withdraw that, and by no provision of the Constitution then existing—which was exactly as the provision reported by the committee—would the Governor have the power desired; nor would he have any power to effect the same object under the provisions of the Constitution of the General Government. The object of the amendment was simply to place in the hands of the Governor a power he might use for repelling raids of that character. The attacks were made almost daily, though they were not the attacks of a foreign power by its organized troops or forces. We occupied an anomolous position inasmuch as while we were at peace with a neighboring republic we shut our eyes to the fact that a state of war actually existed. The Mexican Government denied the state of war but that did not relieve the border of these raids and attacks, and he thought it should be put in power of the Legislature to call forth the entire forces of the State if necessary for the protection of that and every part of our frontier.

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[52] The proceedings for this day were taken from the *State Gazette* (Austin), October 6, 1875.

MR. ALLISON opposed the amendment. The clause as reported has been operative in other Constitutions and should for all necessary purposes be in this one. It was found equal to all occasions in other states bordering on Canada and Mexico, and he regarded any departure from this as dangerous.

MR. KILGORE proposed, "whether by enemies or by bands of lawless men" as a substitute.

MR. WEAVER said he had had some doubts as to how he should vote, but was convinced by the cogent reasoning of Judge Reagan. He opposed the amendment.

MR. STOCKDALE said that Mr. Kilgore's substitute accomplished the same object as did Mr. Stayton's amendment. Indeed it went further, for it allowed the use of the militia against our own people. It seemed positive that the word "invasion" implied a foreign force led by or under the authority of a foreign government. There was no danger in the amendment. It was specific, certain, and limited. It gave authority to use the militia to repel raiders, and not to use it against our citizens. In case of rebellion, the Governor had power to use the militia to suppress it, by another section, but not by this amendment. It was said that the Constitution of the United States provided for these matters. It was true and was intended with the correlative duty of doing its duty, but did not do it. The neglect of the Government to defend its citizens left them the right to defend themselves, even if they proceeded to extreme measures. The law made it the duty of the United States Government to protect the Rio Grande border. Its failure to do so made it devolve upon the commonwealth to do so, and failing in that, it became the duty of the section injured to defend itself, even to the extent of following its enemies across the Rio Grande chastising them in their strongholds. Unless protection was given the region west of the Nueces, the border would have to be abandoned and his own district would become the border and be subject to the raids and horrors of frontier foes.

MR. SANSOM opposed the motion. He thought the Governor had all the necessary power under the section as reported.

MR. JOHNSON, of Collin, moved the previous question.

MR. WEST explained that it would bring up the whole article to a direct vote, and Mr. Johnson withdrew his motion.

Mr. Kilgore's substitute was voted down.

JUDGE BALLINGER proposed as a substitute, "to provide by law for the protection of the frontier from armed incursions and bands of raiders and for calling forth the militia for that purpose." The amendment was lost.

MR. KING moved to amend by adding after the word "and" "protect the frontier from hostile incursions by Indians and other predatory bands."

MR. STAYTON accepted the amendment and the substitute was adopted by a vote of 52 to 27.

MR. STOCKDALE presented the following amendment: Strike out of Section 14 all after the word "adjournment" in line 110, and insert the following: "If any bill, except the general appropriation bill, containing appropriations for more than one object be presented to the Governor, he shall return it for that reason to the

House in which it originated, without his approval, if the Legislature be in session; if not, then to the State Department, as heretofore provided."

MR. STOCKDALE explained his reasons for his amendment. He thought it was exceedingly dangerous to allow a Governor the liberty of returning a portion of an appropriation bill and sanction another part of the same bill. He did not refer to general appropriation bills. Did any one want to give the Governor power, after the adjournment of the Legislature, to strike out the judges' salaries in an appropriation bill? They placed restrictions on the Legislature, then why not on the Governor? The Governors were but men, like the delegates in the Convention, and an imprudent man might get into the Governor's chair and trouble would ensue. He (Mr. Stockdale) would not give the Governor the power to veto an appropriation bill, unless he vetoed the whole of it.

Mr. Stockdale's amendment was lost.

MR. FLOURNOY proposed to amend Section 14 as follows: Strike out of lines 109 and 110 the words "and give notice thereof by proclamation," and also "and make proclamation of the same" in line 124.

JUDGE BALLINGER opposed the amendment, and insisted upon the wisdom of a publication of the Governor's proclamations.

MR. FLOURNOY said they did not go to the Journals for the laws, but to the Secretary of State. If the Governor vetoed a bill it did not become a law, and there was no use going to the expense of publishing his reasons, and if he did not veto it, it would be found in the laws as certified by the Secretary of State, where all lawyers look for them.

Mr. Flournoy's amendment was lost

MR. MIILS proposed to amend by striking out "$2,000" and inserting "$1,800" as the salary of the Secretary of State.

MR. MURPHY opposed the amendment. The responsible duties of the office were worth $2,000, and the most zealous advocate of retrenchment and reform ought not to desire to reduce it beyond that figure.

MR. MCCORMICK said that if there were no other reason than that it came from the wrong side of the House he should oppose it.

MR. MILLS said that he was willing to stand on his record for the last six or seven years on retrenchment and reform, and no member could do more, whichever side of the House he belonged to. He was a Republican, elected as such, and he should do what he conceived to be his duty, despite the slights he might receive from the member from Colorado or any other member on that floor.

Mr. Mills' amendment was lost.

GENERAL WHITFIELD offered an amendment to Section 22, to increase the Attorney-General's term of office from two years to four years.

MR. DARNELL opposed the amendment. He thought two years was a sufficient term of office for any state official, except the judiciary, and if their duties were performed satisfactorily they could be reëlected.

GENERAL WHITFIELD replied that the Governor's term had been put at four years, and he had been made responsible for the good conduct and honest management of all other State officers. Then why not let the Attorney-General hold his office for four years, and if he were incompetent or dishonest let the Governor turn him out.

MR. DARNELL inquired if the Governor were responsible for all of the acts of the subordinate officers of the Executive Department. Being answered in the affirmative, he said he hoped he would be forever delivered from the office of Governor. He said the increase of the Governor's tenure had not passed from the control of the House, and he hoped some one would move a reconsideration of the vote increasing it to four years, and put the term down to two years, where it ought to be. He did not hold to the doctrine that the Governor was to be held responsible for all acts of the other State officers, and believed that every man should stand on his own foundation.

General Whitfield's amendment was lost.

MR. FLOURNOY moved to amend Section 22 in regard to the Attorney-General, by inserting "and shall especially inquire into the charter rights of all private corporations, and from time to time, in the name of the State, take such action in the courts as may be proper and necessary to prevent any private corporations from exercising any power, in demanding or collecting any species of tax, toll, freight, or wharfage not authorized by law; and shall, whenever sufficient cause exists, seek a practical forfeiture of such charters, unless otherwise expressly decreed by law."

MR. STAYTON thought it would be burdening the office of Attorney-General too much to impose such duties on him, considering the salary.

MR. FLOURNOY said the additional duties would consist merely of giving proper instructions to the district attorneys, and the office of Attorney-General with the fees was one of the most lucrative in the State.

MR. SANSOM said the Legislature would determine whether it was necessary for the Attorney-General to perform the duties.

Mr. Flournoy's motion was adopted.

MR. GERMAN moved to amend by reducing the salaries of the Comptroller, Treasurer, and Commissioner of the General Land Office from $2,500 to $2,000 per year.

JUDGE REAGAN moved to strike out $2,500 and insert $3,000 for the above salaries, and supported his motion with a speech. He said the salary was the lowest that ought to be offered for such responsible and important positions and though men might be got for less, it was degrading the laws and glory of our proud State to reduce these salaries beyond reasonable compensation for the sake of saving $1,500 a year in these three important offices. The Convention had provided for biennial sessions, reduced the mileage and per diem of members and thereby effected an annual saving of $200,000 and by such amendments as would be made in the judicial organization of courts and other matters they would be enabled to save annually more than twice $200,000 for the people's benefit. This was what he called organic retrenchment.

MR. DEMORSE cautioned the Convention in its zeal for retrenchment, not to go as far from a just medium as had previously characterized the other side of the question. He was one of those who gave volume to the cry of reform, and did not fear to go before his constituency and tell them that he did not believe in reducing these officers' salaries, for the purpose of saving a few hundred dollars per annum. He took the same position that he had taken before the committee in opposing these reductions. He had favored, then, a salary of $3,000, as the gentleman from Anderson knew, as the lowest possible amount of remuneration, to fix them in their new homes and maintain them respectably. He found from inquiry since he had been in Austin that the cost of living was two or three times greater than it was in his home in Paris. He had been silenced in the committee by the statement that the incumbent Comptroller would be glad to get the office again at $2,000 a year, but during the last twenty-four hours he had learned that, though living three miles from the city and practicing the most rigid economy, he could scarcely make the salary clear his expenses. It would be stated that plenty of men could be gotten to fill the positions. If the offices were restricted to single men, who could board, there might not be much difficulty in filling the offices.

The question was, should they disfranchise every poor man in the State? Should they say that no man who was not rich should not serve the State in these positions—say to them virtually, "You shall not serve the State; you have not sufficient money, and if you go to Austin with a salary of $2,000 you must speculate at the expense of the people or get into debt." Did the Convention propose to disfranchise three-fourths of the people of the State from serving them? He was proud to say that he represented a constituency who would not sanction this thing. He had come to Austin with the intention of favoring a substantial retrenchment, and they had lessened the expense so much that all would admit it. All that could be saved by this amendment was a mere $1,500 in these high and responsible offices. He was not in favor of that sort of economy, and he had no fears that his constituency would fail to support his action, for they were men of common sense and desired only a reasonable economy.

Mr. German charged Mr. DeMorse with inconsistency. He said the latter had favored a reduction in the mileage and per diem pay, but was not in favor of reducing the salaries of officials. No sooner did the Convention settle down to the work of retrenchment and reform than some members fled the track.

In the salary of department officials was to be found the main question. They had cut down the salaries in the legislative department, so why not do the same for the executive department? They had inaugurated a wise principle, and he hoped they would continue in it.

Judge Reagan's amendment was lost by a vote of 21 to 55.

Mr. German's amendment to reduce the salaries of the three officials from $2,500 to $2,000 was tabled.

MR. BRADY moved to reconsider the vote abolishing the office of Superintendent of Public Instruction. He said he was desirous of reconsidering on the ground that the gentleman from Colorado refused to vote for it yesterday because it came from the wrong side of the House. He wanted to see if Mr. McCormick would support it because it came from the wrong side of the House again.

The Convention, by a vote of 32 to 46, refused to reconsider the question.

## TWENTY-SEVENTH DAY

### WEDNESDAY, OCTOBER 6, 1875[53]

### *The Executive Article*

MR. RAMEY called up his motion to reconsider the vote reducing the salary of the Secretary of State to $2,000. He thought members of the Convention had voted under a misapprehension. He said the office of Secretary of State was equal in importance to the other State offices, except that of the Governor, and stood next to the governorship. He showed its relative importance in both the National and State Governments, and eulogized the incumbent Secretary of State.

By a vote of 33 to 40 the Convention refused to reconsider.

MR. GRAVES moved to strike out Section 26, which provided for the appointment of notaries public. He thought it would be better to let justices of the peace act as notaries *ex officio*. It was so in the Constitution of 1869, though this might be the principal reason of some for opposing it.

MR. ALLISON opposed the motion. He said ladies sometimes had to ride a long distance to find a justice, when a notary was much more convenient.

MR. GRAVES said he had never found a notary public to be more convenient than a justice of the peace.

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[53] The proceedings for this day were taken from the *State Gazette* (Austin), October 7, 1875.

Mr. Graves' motion was lost.

**MR. C. ERHARD**, of Bastrop, moved to amend the section pertaining to executive officers by adding after the words "Land Office," "and the foregoing officers shall be eunuchs." He said the men who were compelled to live on the low salaries offered executive officers could not possibly support families at the rates allowed. His amendment was ruled out of order.

## *Suffrage*

Section 2 of the suffrage article provided that only those citizens who had paid all poll taxes due the State and county might vote.

**MR. MARTIN**, of Navarro, moved to amend by adding, "and shall have paid all others debts due by him to any individual in the State and county." He said it would be unjust and ridiculous to force men to show that they had paid all of those dues, and if their certificates were lost, to force them to prove it. He was opposed to electors having to get a pass to vote, and it was just as reasonable to demand that they pay their private debts as a qualification for voting.

**MR. CHAMBERS** moved to strike out lines 13 and 14 of Section 2, which required of the voter the payment of "poll taxes due by him to the State and county."

**MR. FLOURNOY** said he was afraid that if the amendment passed the State would become involved in a difficulty with the Federal Government. He read Section 2 of Article XIV of the Constitution of the United States to support his position. By this article it became the plain duty of Congress, under the Fourteenth Amendment, to ascertain if the suffrage was "abridged," and if so abridged, to reduce our Congressional representation in proportion to the abridgement. Congress would have the right, if the clause passed in the matter reported by the committee, to send a committee of inquiry to Texas. The fact that the next Congress would likely be Democratic would have nothing to do with the question, as Congress would be bound by the Constitution. There was no distinction made on account of color, it was true, for there were hundreds and thousands of white men who would not vote if their right was abridged in the manner proposed, but they would vote on the adoption of the new Constitution and their votes would be cast against that instrument. It was true that the State had the right to regulate suffrage, but it was under certain restrictions which the State and people did not desire to be placed under. Should they encourage fraud and bribery? Should the poll tax of $1 a head be the qualification for voting? A man might purchase, if he were a rich man, 500 voters of a certain class at the price of their poll tax—$1 a head.

MR. MILLS said he understood this as a thrust against the colored men, and was a violation of their rights. He had come to Austin to meet the Democrats in a spirit of conciliation, but they did not seem to entertain the same spirit. "Pass this measure, and you will do yourselves more harm than you will do the Republicans. You can hardly get your men now to come out of the sand hills and the black-jacks, and if you pass this measure they will come in still fewer numbers." The colored voters, he thought, would sell their hats or boots rather than be deprived of their votes.

JUDGE REAGAN replied on behalf of the committee. He said he was not surprised at the argument of Mr. Mills, but was at the proposition of Mr. Flournoy. The Fourteenth Amendment had been adopted to prevent the Southern people from restricting the blacks from voting, and was virtually superseded by the Fifteenth Amendment, which was now in full force; but this clause of the committee's report did not propose to restrict on account of race, color, or previous condition of servitude. In view of these facts, the application put upon the amendments was out of place. Georgia and Tennessee had adopted similar clauses in their Constitutions in 1870, and Pennsylvania in 1874, but Congress had not interfered with them. Mr. Flournoy's argument in this respect was a clear assumption and without foundation or reason as to its expediency. The form of evidence required to show that a man had paid his poll tax could be prescribed later. If the clause contained a righteous principle it ought to be maintained. It was in the nature of a compact between the State and the citizen, by which the latter contributed to the government which protected him. A refusal to contribute to the support of the government ought to disqualify the citizen as to suffrage. This plan would operate no more against the blacks than against the whites; in fact, the former, as had been said by Mr. Wade, were sure to vote. He mentioned his own county of Anderson, where, out of eleven or twelve hundred voters, not more than three hundred had paid their poll taxes. It was the floating, irresponsible population that controlled at elections, and, though they contributed nothing to the support of the government, they claimed the right of administering it through the election of its officers. The only way to reach that class was by a clause like that which had been reported. The only power to revise their action lay in the Fourteenth and Fifteenth Amendments, and there was nothing in the two amendments to reach the case.

MR. DEMORSE said the mature consideration and the experience of thirty years had led him to take a different view from the one he had formerly held on that question. A deadly lethargy seemed to pervade the body politic, and it required a great effort to get the votes out. If they adopted the clause requiring a poll tax receipt for voting, it would act as disfranchisement to a very large body of voters. For that reason he was opposed to any restriction of suffrage by a poll tax payment or otherwise.

MR. LYNCH said he could not see that the payment of $1 poll tax made a restrictive suffrage. The people of his district were poor but they believed in good government and were in favor of some such clause as the one reported by the committee. He thought that if the government granted suffrage it had also the right to expect revenue therefrom; no one could justly object to paying a small sum for the inestimable right of voting.

MR. MCCORMICK said he favored the original clause. There were 2,900 voters in his own county, and not more than 1,500 paid their poll taxes.

MR. FLOURNOY replied to Judge Reagan's argument. He said if the Government were allowed to impose a poll tax of $1 as a voting prerequisite it might be easily increased and thus work a further disqualification. He thought it was a pernicious principle.

COLONEL FORD said he was opposed to any qualification for suffrage. As had been said by the gentleman from Galveston, if the Government had a right to levy $1 as a qualification for voting it could levy any amount.

MR. DOHONEY argued that suffrage was not a natural right, but a conventional one. It was the laws of the country which decided who were, and who were not, voters. The law-makers should be able to decide, with limitations by the Constitution, what should be the qualifications for these voters. Mr. Mills had said that the clause would keep more white voters from the polls than colored men. If that were true, how could he cry out that this was proscribing the colored man?

MR. WEAVER spoke somewhat at length against the poll tax requirement.[54]

He said: "Mr. President, whenever I find myself differing from the gentleman from Anderson (Mr. Reagan), I stop to inquire whether I am wrong, for I regard him as one of the greatest, if not the greatest, living statesman in Texas today. But, sir, I have heard the arguments of honorable gentlemen, and while I am not prepared to say that the Constitution of the United States stands upon this question, like a lion in the pathway of the Convention, I honor every argument and proposition made by the gentleman from Galveston (Mr. Flournoy). It is not my purpose to argue that suffrage is either a natural or conventional right. I think that the old proposition we have heard from boyhood and which Fourth of July orators grow eloquent about, as illustrated by Thomas Jefferson when he wrote those famous words, that life, liberty, and the pursuit of happiness are the inalienable rights which men possess, and not whether they were born free and equal, has as much potency now as when it was first inscribed by him in the Declaration of Independence. The question argued at that time was the right of the people to be free from taxation without representation, free from tyranny. It was argued that men possessed these rights, and out of these inalienable rights grew the American idea of government. It was an idea of democracy and political equality, not one of moneyed aristocracy.

"The proposition now is that we shall impose a poll tax on the people of Texas without limitation—though only $1 is now mentioned—that every man who approaches the ballot box to exercise the right of an American citizen must, as a prerequisite to that right, and of the exercise thereof, be able to prove that he has paid his poll tax—a tax on which no restriction is placed in amount, except in the conscience of the Legislature which imposes the tax, and which may be $5 or $500, as circumstances and our rules may determine.

"I am not arguing the question or expressing the opinion that they will do it, but of their right to do it. While I believe that this would be an abridgement of the right of suffrage, I do not argue that we should be violating any of the provisions of the

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[54] Mr. Weaver's remarks are taken from the *State Gazette* (Austin), October 14, 1875.

Fourteenth and Fifteenth Amendments. I do not place it on that ground. It is claimed that it would be a protection to the ballot box; that it would be a protection from the invasion of the floating population—these hordes that are brought here by the railroads. It may be so, but I do not consider this argument of any force. Neither do I consider it an argument of any value, that it might deprive the colored man of the right of suffrage. That is not an argument to me. I believe in the supremacy of the Anglo-Saxon race above negroes, Indians, and heathen Chinese. I stand here and elsewhere, always ready to assert the supremacy of my race, but notwithstanding this, I believe that this restriction on suffrage strikes at the dearest boon of a freeman and a citizen; that it strikes at the highest privilege of a freeman, and I believe that the negroes, as Mr. Mills has said, will sell their hats, boots, and shoes to pay their tax and qualify themselves for the polls and will struggle to the last. Nay, I do not know but that some of them would even steal to get enough to pay their poll tax and vote.

"I believe in the universality of suffrage in all sane citizens over 21 years old and not disfranchised by reason of felony, as much as in the inalienable right of every freeman to life, liberty, and the pursuit of happiness. The ballot box is the strong arm of the people's defense and the power of democracy. Shall we invade the privileges of the ballot box and say, 'because you have not paid your $1 poll tax, draw your lines around the ballot box, saying thus far shall you go and no farther?' Can an American citizen be proscribed for anything short of felony? Can we say, 'stand back; we have drawn a *monied circle* around the ballot box?' I say that there is a power behind the throne greater than the throne. Do we sit here in this Convention like Delilahs with the people's heads in our laps ready to shear the locks of the people, to cut off the powers of the people? I say that the power that makes this Convention is the people, and I say furthermore, that if you pass this qualification tax to the right to vote, that the people will denounce the Constitution and reject it. Do you suppose the people will say of this Convention as the French said of their kings, '*We are their people, we are their prey!*' No, sir, the American people know their rights, and if this passes we will hear the roar of a more terrible cyclone than that which recently swept our coast with the whirlwind of destruction. You will hear the tidal wave of democracy surging about this Capitol in their mass meetings, through their free press, and in all the forms that free people express their will up to the high tower of might, the ballot box!

"If you had gone into my county during the hard monetary crisis you would have found many citizens who had no meat in their houses, though on the extreme frontier. I know of numbers of the most respectable citizens who had not a dollar in their pockets and could not afford to enjoy the luxury of a cup of tea. To say that the men who rescue this land from barbarism; to say that the old, tottering veteran who struck down despotism; to see that man tremblingly approach the ballot box to exercise the right which he has purchased with his blood, and to tell him that he cannot vote because he has not a dollar in his pocket to pay his poll tax, is monstrous, and I cannot approve of it. I would not say so by my vote for my right hand, and I will not say so on principle. I do not believe that the laws should impose such a restriction, and I do believe that the question of registration or its equivalent comes in, notwthistanding the opinions of gentlemen on this floor to the contrary.

"How are you going to decide, without registration, who are competent to vote? I believe it would open the door to more wholesale perjury than anything else this Convention could do. I believe that the negro would steal money to purchase a qualification to vote, and that such a one would not likely be stopped by the sanctity of an oath. If there is anything that should be dear to an American citizen, it is to exercise the one dear right of suffrage, except the right to exercise the right to worship God according to the dictates of his own conscience. I say that this will disfranchise not the negro, but the white men of Texas. Texas is not made of rich men. It is made up of poor men; made up of the agricultural and mechanical interests, the mechanical portion being those who build our roads, our cities, our bridges, and the very houses we live in. Why the very capital of the State is made up of poor men, and they are struck at in this proposal.

"If I were to advocate any qualifications at all, I would always advocate one of intelligence, and not whether a man has one dollar, ten dollars, a hundred dollars, a thousand or tens of thousands of dollars. As a qualification to vote, I should want him to be intelligent; to be able to read and understand the laws; that he should be able to understand the genius and spirit of the Government under which he lived, and that he should know the reason why he was exercising the right of suffrage. I believe with the great American preacher, John N. Maffit, that the Almighty never intended to create a dollar qualification for suffrage. Men who have amassed fortunes are frequently the most ignorant of our form of government. Base the exercise of suffrage, if you will, on the intelligence and moral worth of the citizen, but never on his capacity to pay $1 poll tax. I say that laws can be made to collect all taxes for the support of the government. I know that governments cannot be run without expense, and it is argued that you cannot levy on a man's head and by forced sale secure the payment of his poll tax. Well, sir, I know it, and honorable gentlemen here know too that you cannot collect taxes by law; everybody knows that the law is insufficient, and hence it is no argument to say that you can take away the right of the American citizen to vote, on the payment of a poll tax, when you cannot prevent him from voting under a property qualification. I do not know of any process by which you may obtain the right to deny a man the right of suffrage. It is of no use to say, 'there is no man who is not able to raise $1 to pay his poll tax.' There are times of monetary crises. And in these times, out in the country, out on the prairie, out in the forests among the pioneers of the frontier, men cannot get $1; and should this proposition pass, it will strike out from voting a large class of the best people of the State of Texas. Furthermore, it would, if it did not endanger the adoption of the Constitution—if the position of the gentleman from Anderson be concurred in—reduce our representation in proportion to the restriction of suffrage. These are my views. I have simply desired to state them, and the principles which will actuate me in casting my vote on this question."

MR. ROBERTSON said there was no unjust or unequal tax proposed by the committee report. All citizens had to pay the same amount. He thought no man had the right to vote who refused to contribute the small amount of $1 to the support of the Government. It would be an incentive to action, and would cause men to take a more active and interested part in the Government.

MR. RUSSELL, of Wood, said that if the Convention made a property qualification for voting their labors would be for nothing. He thought their work would be set aside by the people as anti-democratic and aristocratic. He felt that it would be a great lever power for their enemies to wield against them, and he knew they would do so with fearful effect. He thought the people would be justified in setting aside a Constitution with such a provision.

MR. MARTIN, of Hunt, spoke somewhat at length against the committee report.[55]

He said: "Mr. President, I ask the indulgence of the Convention for a few minutes that I may express briefly some of the reasons that will control my action upon the proposition now pending before this body. Sir, this is, in my judgment, one of the most grave and important questions that has been, or will be, before this House. It is a question that should rise above all party considerations. It lies at the very base of republican government. It is one in which the word Democrat or Republican should have no place. It is a question which, if decided one way, would be a direct invasion of one of the highest prerogatives and most sacred rights of freemen.

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[55] Mr. Martin's speech was printed in full in the *State Gazette* (Austin), October 20, 1875.

"It imposes a restriction upon and abridges a *right* of the people, held sacred since the foundation of our Government; one that cannot be violated in a free state without endangering the liberties of the people.

"Mr. President, the tendency of the spirit of the age is to emancipate the minds and consciences of men and to strike from their limbs the shackles of slavery.

"It was the failure of the leaders of the Southern States to recognize the inviolable drift of events that 'fired the Southern hearts' and precipitated the cotton states into revolution. It was this failure, sir, that lighted the Civil War and laid in ruins one of the fairest portions of God's heritage and left eleven states prostrate at the feet of Federal power.

"It will, then, be an act of wisdom in us to be guided by the light of reason and experience.

"The right to vote is sovereign and inalienable. It is a natural and inherent *right* and not a right created by compact.

"The proposed requirement of a paid-up poll tax, the most odious of all taxes, as a condition precedent to voting, is an act of aggression upon the sovereign rights of the people.

"This majority report, if adopted, sets the price of $1 or $2, as the case may be, upon the head of the voter; for turn and twist it as you may, it comes to that at last.

"Yes, sir, he must come up to the polls with hat in hand and pull from his pocket the receipt for the payment of the tax upon his head before he can vote; and *this* is the price you fix upon a *freeman!* Will you do this? 'Is thy servant a dog that he should do this thing?'

"Is this a covert design, cunningly devised, to plant the germ of aristocracy in this land?

"Whether or not it is so avowed, this is its inevitable tendency, and must in time result in transferring the political power of the State into the hands of the wealthy alone, and thus consign to slavery men who were made free and independent in the image of God who made them.

"I ask the gentleman from Anderson (Judge Reagan) what is the meaning of the word *freeman*, as used in this Constitution? I ask him if voting is a privilege or a right.

"I take it that *freeman*, when used in the Bill of Rights or elsewhere in this Constitution, means one who has by nature the *right* to choose that form of government which may appear to him most suitable and best calculated to protect him in life, liberty, and property, the great ends for which governments are instituted.

"Whether or not it is a right or privilege, this third section of the Bill of Rights declares 'all free men have equal rights and man or set of men shall have exclusive privileges,' and the twentieth section declares that to guard against the transgression of this high power everything in this Bill of Rights is excepted out of the general powers of the Government; and when this part of the Bill of Rights, as reported by the committee, comes up for action before this Convention, I have no doubt but that it will be adopted. I *know* that it will receive my support.

"Then, sir, if it is an inherent right, this provision removes it from the domain of legislative action, and it must be held, as it is, a *sacred right.* The Fourteenth Amendment to the Constitution of the United States, referred to by the gentleman from Galveston (Colonel Flournoy), only curtails or reduces representation in Congress in proportion as suffrage is abridged. This is its full scope and meaning, and it goes no further.

"Mr. President, all over the district which I have the honor, in part, to represent on this floor, I took the position that I would, if elected, so far as my action could accomplish such results, make a Constitution that would shelter under its wings every citizen of the State, the weakling as well as the strong; the peasant in his humble cottage as well as the lordly millionaire who revels in wealth and luxury. I intend to adhere strictly to that line without variableness or shadow of turning.

"I am representing a constituency who would *scorn* to have me by word or act engraft upon the organic law such odious distinctions as are recommended by the majority of the committee.

"No, sir; they do not expect me to set the miserable price of $1 or $2 upon the heads of men born to freedom.

"It cannot affect the *rich;* they can always pay their taxes. It affects the *poor* man and the poor man alone.

"Entertaining these sentiments, Mr. President, I shall give my voice as the representative of a *free people* against the report of the majority."

MR. NUGENT said he was in favor of the levy as provided by the report of the committee. He thought every man who voted should be willing to pay a small sum for the privilege. The right to vote was not an inherent right, but a conventional one, and should be regulated by law.

MR. J. W. BARNETT, of Parker, said the adoption of the majority report would be a new departure from the old landmarks of democracy. If half as much had been said fifty years before as had been said that day against universal suffrage, the Convention would have been marched out of the House as an illegal body. Pass the measure, and it would be a stepping stone toward aristocracy and imperialism. It would array a combination of classes against them that would defeat the Constitution they were making. The best soldiers he ever knew, and who had given their lives in defense of their country, had never paid poll taxes in their lives.

MR. LOUIS CARDIS, of El Paso, said the question was, did all of the citizens of Texas have a right to vote, or only a portion of them. Which class was to be deprived of the sacred right? The article would indicate that it was the poorer class. The majority of his constituents were poor, but honest. Would he consent to deprive them of the right of suffrage? On the contrary, he would propose, if he could possibly get a majority, that any citizen of the State too poor to pay his taxes should be allowed to vote twice.

MR. STOCKDALE said that taxation without representation was tyranny, and that representation without taxation was equal to tyranny. There had always been a class of men who, possessing nothing themselves, would delight to vote any measure of taxation upon other men. Was it right that these irresponsible and often transient men should be permitted to vote what they pleased upon others? The duty of paying a poll tax abridged no one, but was equal to all.

MR. KILGORE said that all the opponents of the measure were howling about "abridgement," and were trying to frighten the proponents of the measure by so doing. They were like the quack doctor who would throw his patient into fits and then cure the fits. There was no abridgement in the matter but only a prerequisite.

MR. BROWN said he was pregnant with a speech and desired to be delivered. He said there were three things he hated, the jailor of Napoleon on St. Helena, the registration law, and the infamous police bill under Governor Davis. And now, when they had gotten rid of the registration act, should they pass a law similar in effect, forcing every man to carry his pass in his hand? The people would curse them from one end of the land to the other. Let the question of suffrage be free to all alike, and let them march in solid phalanx, under the broad aegis of American liberty, and deposit their votes. He thought that the workings of the system, as proposed by the committee, would be sure to produce fraud.

MR. JOHNSON, of Collin, said the whole gist of the matter as proposed by the committee was an effort to oppress the poor. He said their long-winded speeches neither bluffed nor intimidated any one; they might speak all day, and the vote would be the same.

COLONEL CRAWFORD said he was in favor of the poll tax prerequisite. He loved the poor, industrious men of his section, among whom he had been reared. As a poor man himself, his every sympathy was with that class; but he knew that there were none more ready to pay the just taxes of Government than they. The poor people of Texas had always paid their taxes with a generous hand, and had always asked that no more be levied than was necessary to carry on good government. Ought a man to make his impression on his country's destiny, and not pay a cent of taxes? It would be a proud day in Texas when there would be no hereditary pauperism. The men who owned the least bits of land, the poor widows with their little property—were all forced to pay taxes. Should not all others be forced to pay at least a poll tax? What man in the Convention would wring taxes from a poor widow to support the Government, a widow who had no voice in making the laws of the land, and yet quibble about a small tax on men? The poor did not object to paying the poll tax, but asked that it should be levied so they would be protected from the floating and irresponsible, who were here today and elsewhere tomorrow; who had no home, wife, and children to love, and were a burden and disgrace to the body politic.

(Mr. Brown in the chair.)

PRESIDENT PICKETT took the floor in favor of the amendment and against the payment of the poll tax. He said the incorporation of a tax of that sort was a dangerous innovation, and there was no telling where it would end. It was contrary to the principles of free government. Was it the object of members of the Convention to disfranchise any citizen? They had no right to do so. Was it their object to raise money? It was a strange and unjust way to raise revenue. The very incorporation of that provision was contrary to the very Bill of Rights they proposed to adopt. Its incorporation in the Constitution would be a blow at the hard-working, toiling masses of their own people. Possibly it had been intended as a blow at the negroes. If so, he thought it would fall harmless at their feet, and the blow would fall with deadly force on the poor, honest men of their own race. Even if he desired to disfranchise the negro he would not do it at the expense of his own countrymen. Let not the rights of suffrage be restricted in the glorious State of Texas! If Massachusetts and Pennsylvania, or any other state saw proper to strike a blow at liberty he could not copy after them. Let not Texas, with all her glorious memories of the valor of her gallant sons, throttle free government.

## TWENTY-EIGHTH DAY

### THURSDAY, OCTOBER 7, 1875[56]

### *Suffrage*

This question was left over from the preceding day. The immediate question was Judge Reagan's amendment to insert "the last poll tax" for "all poll taxes due by him, etc.," in lines 24 and 25.

MR. MOORE defended the report of the committee. He held that it was no violation of either the letter or the spirit of the Fourteenth Amendment, which was merely advisory as to the basis of representation. He denied, as affirmed by President Pickett, that all political power was inherent in the people in the sense in which that gentleman put it, for the people meant the whole people—men, women, and children. The term had no political signification, and existed only in the forms of political society. It was only the aggregation of individuals under the forms of government, who represented the powers of government, who could give any force or expression to sovereignty. He did not believe that the people were to be cheated by the mere sound of reform, by the cutting down of offices, by the cheapening of salaries, and by the shortening of terms; but they must look to the aggregate effect upon the political institutions of the State. Thirteen states had prescribed limits to suffrage, not "abridged" it—for that was a misnomer—and why not Texas? He thought the citizen owed duties to the State the moment he was born into it, for he was born into the government or political society whichever it were. He could not see why any man who claimed the protection of the government for his person and property, even to the extent of involving it in war, should not contribute to its support. With reference to the southern portion of the State, he found that Brazoria County had a poll list of 1,670, while the poll taxes paid were only 645. Colorado County had a list of 1,061, of which there were 705 paid. On the other hand, in the northern county of Grayson, out of a poll list of 3,239 there were only 689 delinquents. Such was the variation in the history of the entire State. Surely there was statesmanship enough in the Convention to compel the citizens of Texas to pay some dues due their Government. He did not want to keep any one from the polls, white or black, but did want all to subscribe to the support of their Government. His votes would show his ideas on retrenchment and reform, but he wanted taxation to be equal, so that the burdens might rest equally on all portions of the people. He did not believe in cheap liberty, and Texas would not be what it was if the fathers had held it at cheap valuation.

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[56] The proceedings for this day were taken from the *State Gazette* (Austin), October 8, 1875.

He wanted no shackles on the people, and did not consider the imposition of a poll tax, to be used for educational purposes, any bar to liberty. His opinion represented his constituency, and they were in favor of a poll tax as a qualification to the exercise of the voting power. His constituents had the right to express their opinions on the score of consistency, for out of a poll list of 3,384 there were only 397 delinquent, and there was not a dollar of debt attached to any incorporated city or town in the county. And the Convention had been threatened too. Even the President had said that the people would not like it, and that such a provision as that reported by the majority might defeat the adoption of the new Constitution. His conception of the intelligence and justice of the people inclined him to a different opinion. He would vote for no bill that would be an attack on the poor man, and did not regard the question then before the House as one attacking him, but rather as something calculated to advance his interests. Mr. Kilgore had very truthfully remarked that the men of the country paid the greater part of the taxes. That was true. They were wise in doing it, for there was no class of citizens needing the protection of the Government more absolutely than the poor. The objection urged that demagogues might influence the people to reject the Constitution, lacked force. He had too much respect for the intelligence of the people to suppose that they could be influenced to their injury.

MR. SANSOM said he regarded the penalty for non-payment of a poll tax as utterly disproportionate to the offense; the denial of his suffrage was too great for his neglect or inability to pay the tax. He was compelled to discharge the duties of citizenship as a juror and a soldier, and yet it was proposed to deny him his highest right of voting. The right to vote might be limited by government, but could not be conferred. It was a right derived from nature. The men who were good enough to fill soldiers' graves in the country ought to be good enough to discharge every other duty in the country, but it seemed that they were not thought good enough to vote.

JUDGE BALLINGER said he did not question the right of the people, under the Constitution they would frame, to impose a poll tax or any other tax as a condition precedent to the right of suffrage. He did not believe that suffrage was a natural, divine, or absolute right which men possessed over and above government. It was a right conferred by government, and could be regulated by it for the good of the people. It was true that the tendency of modern times was to take away the reservations on suffrage which had been imposed in former years; the tendency was toward universal suffrage. The question was how far this tendency could be carried into a fixed theory, and this was a question of expediency. He did not agree with President Pickett that they could locate suffrage in the Bill of Rights. The Bill of Rights said that all political power was inherent, not in the electors of the state, but in the people, and the logical conclusion was that females might vote.

If it had been the intention of the Convention to establish a system of free education for all the children of the State, and had an adequate tax on property been imposed for that purpose, he would have supported the present proposition. They could have said to the poor white man and to the colored man, "This matter is to secure in the highest degree the happiness of your children and good government, and you must contribute to it in order that you may derive the benefit, and you shall take no part in the government unless you contribute to it."

But as he understood the temper of the Convention, as judged by their votes and the report of the Education Committee, not much would be done in that direction, only one-tenth of the annual income being allowed for educational purposes. But it was proposed in lieu of that to levy a poll tax as a condition precedent to the exercise of suffrage, to be devoted to educational purposes. He said he could not consent to that. He would not, when asked for the great blessing of education by the people, give them a stone instead of bread.

Judge Ballinger next read the Act of Congress readmitting Texas into the Union, in which it was explicitly stated that no class of citizens should be disfranchised except for crime. It had been passed by the dominant party. He did not regard that law as having judicial sanction, and thought it had no other sanction or power of enforcement except that which it got from the domination of that party and its power to enforce it. It might be—and none hoped so more fervently that he—that its power was broken, and that it would never be able to say to Texas: "You have broken the conditions on which you were admitted to the Union, and it becomes our duty to determine what the punishment shall be and what conditions shall be imposed." Under the Constitution of 1869, which was a very bad one but accepted by Congress as a condition of representation, one-fourth of the annual revenues was set apart for a school fund, and a poll tax was ordered raised for the same purpose. It was not judicial power they had to fear, but political power, if Congress should have the means of enforcing it. Behind that, too, was a great moral power, and it was that they should give to the children of the State of Texas public free schools. He thought such a system underlay the intelligence and patriotism of the country. He knew that Congress had no right to impose those conditions, but, as wise men and statesmen, holding up a future for Texas, could the Convention ignore the fact of such conditions? As members of the Democratic party, could they afford to ignore public opinion? Yet, instead of preserving a public school system, they had proposed a poll tax, intending merely, whatever they might say to the contrary, to reach the colored people and make it a fundamental condition of suffrage. He thought that public sentiment outside of Texas, Democratic as well as Republican, was for free schools, and that it would regard Texas as having struck her flag for free education. Whatever argument might be used in its defense, the clause was simply a restriction on the right of suffrage of the poor people of the State. The State of Texas, he thought, could do nothing more dangerous to the success of the Democratic party. He, for one, was not willing to do it. If the Convention would establish a system of free schools he would vote for it with the greatest cordiality, for they would then have the right to say to the people that to enjoy those benefits they should contribute towards them.

MR. WAELDER said the only question in his mind was whether those who received the support of the Government should contribute to its support. He combatted the assertion that suffrage was an inherited right. The Government had the right to regulate suffrage, just as it had the right to say that females who were citizens, minors, persons of unsound mind, paupers, and criminals should not vote. These were all regulations; the power to impose them was not denied; then why deny the right to impose a tax as a condition precedent to voting? In the social compact between citizens and the State every man yielded necessarily some of his natural rights. This, in his opinion, was not a question of principle at all, but one of expediency. Was it proper and expedient for the State to impose a poll tax or any other tax as a condition precedent to voting? He could have sanctioned the report of the majority of the committee if, instead of requiring the payment of a poll tax they had required the payment of all taxes due from every citizen to the State as a condition precedent. At the proper time he would propose an amendment to that effect. Government was instituted as much for the benefit of the poor as of the men who were worth thousands. He did not favor the adoption of this provision because there were ten or twenty thousand or more negro voters in the State. That had never once entered into his mind. He did not care whether the man was black or white; the question was whether it was right or proper that each man should contribute his share of the administration of government. Was it right that the taxes should be paid? This was no new question, but had been settled affirmatively in many other states, as had been shown by the preceding speakers. The mode of proof of having paid their tax would doubtless be simple, not onerous, and would be regulated by the Legislature. Their President had said that the object in view was to prevent some one from voting or to collect money from some one. The object was, to a limited extent, to collect money, but for a legitimate purpose; not that the right should be taken away, but the exercise of it; or, as was well said by Mr. Reagan, to compel those who do not pay any taxes to contribute their share of the expense to the Government which protects them. The question with him was not whether the people would approve their course, but was it right. What was unpopular today might be popular by-and-by. If the action of the Convention was right they could convince the people of the wisdom of their course and they would sustain them. He differed with Judge Ballinger, who said he was not prepared to give this measure his support because the Convention had not deemed proper to establish a system of public school education. On that question he was willing to go as far as anyone, and he considered it their duty to provide, by taxation or otherwise, for the support of such a system. While he shared Mr. Ballinger's fears on that subject, he was not yet convinced that such would be the action of the Convention. He not only sustained the action of the majority report, but was prepared to make further recommendations.

MR. JOHNSON, of Franklin, spoke next in opposition to the poll tax prerequisite.[57]

He said: "Mr. President, I come as a gleaner after the harvest. only hoping to gather up here and there a few scattered heads of grain that have escaped the skilfully handled sickle. I have listened patiently for more than two days to the exhaustive arguments both for and against the policy of making the exercise of suffrage conditional upon the prepayment of a poll tax, and must say that all that I have heard has but confirmed my first impressions of its inexpediency, whilst I do not intend to repeat the able arguments I have heard made against this measure.

"I would say I was much impressed by the language of the gentleman from Williamson when he denounced the folly of compelling the citizen to do all manner of service; work on roads, serve on juries, and fight the battles of the country. And yet he might be denied the privilege of a free man, because of the failure to pay $1 or $2 poll tax. I thought then, and think now, that the justice of this will be apparent to all when we consider that no other dereliction of duty, however great, short of a felony, can work the forfeiture of the political franchise.

"The citizen may avoid working the roads, he may shirk the jury box, he may fail of service in the hour of his country's peril—yea, he may prove craven when that country is being pressed into the very issues of life and death—yet, this poll tax paid, he stands defiantly before a free and open ballot box, none daring to challenge, whilst, sir, the true man, who has denied his country no service, responded to her every call, it may be had his very limbs shorn in her service, stands before a closed ballot box, which his valor helped to save, challenged and humiliated—and for what? Simply because the pressing necessities of life could not spare the pitiful sum to pay this tax. But, Mr. President, I would call your attention to another serious objection, its corrupting influences upon the elections of the country; opening wide a gate to the ballot box, through which bribery can go and will go in and out at pleasure. Those candidates for office who are evil and corrupt will seek out that class of voters who are of easy virtue and slip into their hand the silver key that will readily open this lock, that gentlemen are trying to place upon the ballot box of a free people.

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[57] Mr. Johnson's speech was printed in full by the *State Gazette* (Austin), October 13, 1875.

"The crafty and unscrupulous politician will and can alone avail himself of the political advantages accruing from this corruption, and thus the very honesty of his competitors will multiply his chances of success.

"I am not, sir, unaware that some of my friends imagine that this clause will cut off a large black vote, but, sir, the effect will be the very opposite of this; dishonest candidates will see to it that none of this class is disfranchised because of their poverty; he will loan them the money, and when we consider how passionately fond they are of voting, we can easily see how they will not likely forget those that helped to gratify this passion; do him this timely favor and he will be yours until death. But, sir, the honest white yeomanry of the country, however poor they be, will repel such an advance as an insult and shrink from the acceptance as from the touch of pollution, and if some outside pressure, in a moment of weakness, one should yield, the very thought of the act for years would fester in memory, and the face ever afterwards would blister with shame at the sight of the ballot box which he had so degraded and dishonored. Nor, sir, would the black voter shrink from carrying to the polls the certificate of the payment of this tax; indeed, he will exhibit it with pride and esteem it as a badge of honor. But the white voter will show this certificate with shame and esteem it a badge of slavery, this we know to have been the effects of the odious registration law.

"Further, sir, in the face of all that has been said to the contrary, I repeat that the restriction proposed will operate a discrimination in favor of the property holder, in that it may compel the one to pay all dues to the Government previous to voting, and the other only a fractional part of those dues. To illustrate: the non-property holder owes none other than a poll tax, the property holder may owe $501 for protection to property and person. The $1 is all that is required of either, leaving the $500 to be collected months afterwards. It is true, as the friends say, that the property is bound for it, but nevertheless delay is obtained, and this delay may be all important in times of monied stringency, giving time to move the crop to market. But you say any monied man can raise a dollar. So he can, but I tell you there are times in many households in this country when the pressing demands of the family will admit of no diversion of that dollar. Sir, the two gentlemen who have so ably championed this measure, the gentleman from Marion (Colonel Crawford) and the gentleman from Anderson (Judge Reagan), tell us that they have belonged to, and still belong to, the poorer classes. Sir, when we remember that these two gentlemen stand at the head of their honorable profession and that rich clients daily throng their doors, we can but interpret the latter part of their statement as a mere matter of pleasantry. I would repeat the apt reply made by you on this floor, Mr. President, it is not their kind of poor people whom we are afraid of hurting. We honor these gentlemen all the more that they have risen from the humbler walks of life to their present high positions. This but reminds us that nearly all men of distinction in this body or out of it in this State have so risen. Indeed, sir, it is one of the grand sights to be seen in this country, our young men bravely going up from poverty and obscurity to the high places; but, sir, I would tell those gentlemen, and I would repeat it with emphasis, that there is a still grander spectacle, and one far more sublime—it is the young man climbing up from the lower valley and as he climbs he carries with him all the sympathies that were wont of yore to twine around the toiling masses, until reaching and standing on the highest summit of human greatness, he finds that he has left his heart with his old comrades at the foot of the hill. The Divine hand with the signet of heaven stamps such a man as a statesman. In this favored land we have many such. I had fondly hoped to find such a character in the gentleman from Anderson. If it be so, shame and mortification must sooner or later surely await him. From the operation of this restriction upon suffrage—for if it operates successfully it must operate against some one—it must exclude some one from the polls; on the election day, that should be in a republican government the proudest day of all the days in the year, some man must stand before the ballot box, which should be the proudest insignia of that government's freedom, and be made to feel that he is no man and has no part nor lot in that government; I repeat, who is to abased? Who is to be degraded? It is said, 'No man knoweth his destiny.' It may not be you or any man in this House, it may not be your prosperous neighbor, but it may be some man who is quite as honest, as true; a man whose flesh like yours quivers when the pincers tear. At each of the 2,000 voting places in this State some man on every election day will be challenged with the despicable words, 'paid your tax?' and will be driven away in confusion, feeling dishonored and degraded.

"Now, sir, if this gentleman be in sympathy with all those to whom this thing will work an abasement of pride, and there will be many for its inauguration day will be a day of humiliation of manhood, how painful and bitter must be his mortification for sympathy. I take it it means more than pity, more than sorrow to feel as the sufferer feels. If so, he will not, he cannot escape the feeling that pertains to the wounded spirit.

"Permit me, Mr. President, to draw a faint picture of an election day under the working of this law in one place only—and this picture, with few exceptions, will be multiplied at every voting place in this State—in the town of Palestine, the beloved home of him (Judge Reagan), whom we sometimes love to call the Great Commoner of Texas. The people are gathering from all the country far and near. The honorable gentleman himself is there, and is looking interestedly upon the great gathering, for an election day is a proud day to him, associated as it is with all his rising fame. As the multitude move toward the ballot box his great soul sways to and fro with thoughts and feelings unutterable; for to him it is but the freshly uncovering of the steps that carried him to the dizzy heights upon which he now sits. In that multitude casting their ballots, not one of whom escapes his penetrating eye, appears an old man well stricken in years. He had seen better days, but misfortune after misfortune had befallen him, until he could scarcely keep the wolf from the door. But today he feels younger, than he had for ten years, because he imagines that he had helped to make one great man, and is about to start another off on the same road. On the ticket in his uplifted hand is the name of a bright-eyed young man, and with a sort of innocent vanity he turns to an old neighbor to tell him what a big part he used to take in elections, when a hard, austere voice shrieks in his ear, '*paid your tax?*' The old man creeps off, realizing for the first time in his life *how a dog feels.* There seemed to be something in those words which wilted his soul as the fire wilts the green leaf. Scarce gone is he ere another takes his place. He stands as if under the heavy weight of years, yet the deep furrows on his face look not like the scars of age nor of sin, but rather the cuttings of the sharp knife of grief. He lifts his hand toward the ballot box, but motionless that hand rests in the air, for the sight of the emblem of his country's freedom conjures up memories of the past; his thoughts have wandered far away to a field dyed with patriots' blood; two noble sons are sleeping there. His wounded soul is debating the solemnly momentous question, the cost of human liberty. 'Have you paid your tax?' The mournful reverie is broken. Then comes the gloomy response, 'I have not paid the tax, but I have given two sons to my country, as noble boys as were ever dangled on a father's knee; and is this all the reward of my heart's great sacrifice? Sleep on noble boys, it is some relief at least to know that the bright eyes that never dimmed before the foe cannot gaze upon a father's humiliation.' On that high pinnacle I behold the sword manly borne. Rising from his seat, a dark frown settles on his brow as the offended majesty of truth. Slowly he lifts his hand above his head and swears by his first love, and by the eternal heaven above, that he will no more eat, nor drink, nor sleep, until the last vestige of this odious restriction of suffrage is forever wiped out from the organic law of his beloved land. (Applause.)

"Mr. President, we have had too much of new and untried theories. Let us go back to those great principles which time and experience have sanctioned. Some gentlemen say that this law has been inserted in some of the Constitutions of the Northern states. Well, sir, it may suit that people; it may be there a transcript of the public mind. But here I know it is not. I am not seeking for a model of government beyond the Alleghany. In trying to follow these strange lights during the past few years we have turned more than one sharp corner without reaching good government. One member said that Tennessee had this provision. The gentleman who would fling the shame of my native state into my teeth will bear with me if I seem incredulous until I see the record. I know that that great and noble state has endured much in the last few years, and it may be that, humbled from misrule, she may have forgotten her former pride, her past renown. If it be so, it is but another sad instance of how the noble spirit may be broken by oppression and wrong. But this I would say for her, and say it proudly and defiantly, too, in the time of her Polks, her Browns, and her Keebles, and her host of other martial spirits, in the day of her glory she would have spewed this thing out of her mouth.

"Now, sir, in closing, I would ask why press this measure, if it be inexpedient, if it be unjust, if it be oppressive, if it be obnoxious to the spirit of the people,, if it be attractive to the dishonest and repellent to the honest, if it humiliates many and honors none? I own that it does all of this. Is it to save to the State, and it can be nothing else, this pitiful sum? Is it that the citizen, however poor and helpless, may escape the excise man? Then, if nothing else will do, make him work the roads, punish him, imprison him, and if need be hang him. But spare us this self-abasement, spare our country this humiliation, and let the ballot box be now and forever as of old, the mightiest expression of human liberty that can be uttered in this free and enlightened land."

MR. DOHONEY, Chairman of the Suffrage Committee, replied to Mr. Johnson. He attacked the position of President Pickett, as founded on the Bill of Rights. He said Mr. Pickett had assumed that political power was inherent in the people, and therefore the Legislature could in no manner interfere with it. It had been shown by the gentleman from Galveston (Judge Ballinger), that if political power was inherent in the people it belonged to all of the people, men, women, and children. That was the condition his *major premise* placed him in, and would force him to give the suffrage to females. Mr. Dohoney denied that sovereignty was an inherent right. It was not that, but a conventional right. The Convention had the right to say that the man who would not contribute anything to his State Government should not exercise the right of voting. If it did not have that right, the country would be at the mercy of demagogues and a quasi-criminal population. No inherent right embraced the right of suffrage. It was the "roughs" and riff-raff who would rule under the principle laid down by Mr. Pickett. The question was purely one of expediency. There could be no doubt about it. Mr. Dohoney restated the position he had assumed at the beginning of the debate, replied to the arguments of Mr. Flournoy concerning the Fourteenth and Fifteenth Amendments, and quoted Cooley to show that suffrage was a privilege and not a natural right. He held that the right of suffrage was granted on the ground of general policy, and that it should be made as general as possible.

Mr. Dohoney replied to Judge Ballinger also, respecting the arguments of the latter concerning the act of Congress readmitting Texas into the Union. He claimed that it was a dead letter, or if not a dead letter it had no practical effect. He also urged that if the poll tax payments were placed to the credit of the school fund a respectable system of education would be kept up. The committee had not intended that any poll tax should be collected except such as accrued after the adoption of the new Constitution.

Mr. Martin, of Hunt, again opposed the committee report. He said he had thrown out his amendment the day before merely as a skirmisher hoping it might lead to a general engagement. He was glad to see that it had done so, an engagement in which the horse, foot, and artillery had all been engaged. He quoted the act of Congress referred to by Judge Ballinger and others. While he doubted its legality, he had no doubts of the might and the will of the dominant party to enforce it. He referred to the great restriction placed on colored votes in New York, the restrictive clauses in Massachusetts, Vermont, and other states, but said all of that amounted to nothing in Texas and other Southern states, where might was made right by the will and hatred of the dominant party. If they would say that all the people must pay their taxes, rich as well as poor, he was with them; otherwise he was not. It was claimed that it would make men honest. He thought that if honesty was to be the test it would be a better plan to adopt his amendment and make all men pay their debts as a prerequisite for voting.

He said he would not harrow up their souls or freeze their young blood by appeals to the poor man or a recital of what poor men had undergone. He regarded all that sort of thing as simply "bosh" and nothing else. What did the State of Texas have to do with their poverty? He would ask nothing in behalf of the poor. Let them adopt that report and it would be nothing but class legislation. It would never reach the disease it was intended to cure. It was pure "bosh" to say that the poor man was as much interested in government as was the rich man. Did a beggar want a lock placed on his door? Did a poor man want protection for property he did not possess? Was he not already as independent as it was possible for him to be? Then, let the Convention treat citizens all alike. If they would make rich and poor pay their debts to the government, he would be ready to help them; otherwise he would not do so.

MR. FLANAGAN moved to table the amendment of Judge Reagan.

His motion carried by a vote of 52 to 28.

MR. NORVELL offered a substitute for the second section. It omitted the poll tax qualification and provided that foreigners who were not subject to the usual disqualifications and who had declared their intention to become citizens six months before an election, who had resided in the State a year preceding such election, and the last six months in the county or district in which they offered to vote, should also be deemed qualified electors. Should any qualified elector happen to be in any other county than that of his residence, situated in the district in which he resided at the time of an election, he should be permitted to vote for district officers;

*provided,* that the qualified electors should be permitted to vote anywhere in the State for State officers.

This substitute was adopted by a vote of 61 to 20.[58]

## TWENTY-NINTH DAY

### FRIDAY, OCTOBER 8, 1875[59]

GENERAL WHITFIELD rose to a question of privilege and protested against the remarks of the *Austin Statesman* of that morning. He said he had never heard such a thing hinted as the combination between the Republicans and Grangers on the poll tax question. For himself, he denied it. He knew of no combination of the Grangers for political purposes, either then or for the future, and he was speaking then as a Granger.

MR. LYNCH said that he, too, was a Granger. He denied that any compact of a political nature had been made by the Grangers in the Convention. For a long time he had refused to join the Grangers Association, because he feared it was political in character, but he was assured to the contrary. Finally he joined them, and experience had proved that it was not a political organization.

MR. WEAVER read the article in the *Statesman* and defended Mr. Johnson, of Franklin, from the imputation sought to be put upon him. He said Mr. Johnson was a man of pure character, of good morals, a minister of the gospel, above calumny, a man who had dared to stand up for the truth when few men had had the courage to do so.

MR. JOHNSON, of Collin, said the Grangers had been supporting this description of gents—officeholders—from the foundation of the world. He thought all the *Telegraph* and *Statesman* said against the Grangers would be of advantage to the latter. The more they attacked him the stronger would be his conviction that he was right.

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[58] The State press took great interest in the proposal to make the payment of a poll tax a prerequisite for voting. A great majority of the papers favored the original clause restricting suffrage to poll tax payers, the usual argument being that without some such clause East Texas would be given over to negro rule. But the plea of extreme retrenchment, and a desire to get as far as possible from the registration provided by the Constitution of 1869, defeated the poll tax requirement. Only one Republican delegate favored the poll tax clause.

[59] The proceedings for this day were taken from the *State Gazette* (Austin), October 9, 1875.

### *Suffrage*

COLONEL CRAWFORD offered an amendment to Section 4, of the committee report on suffrage, which would add, "but no law shall ever be enacted requiring the registration of voters in this State."

MR. DEMORSE moved to add, "except in cities having 10,000 population."

MR. FLOURNOY particularly requested that Galveston should be excepted. It wanted no registration then or thereafter.

MR. DEMORSE withdrew his amendment.

JUDGE REAGAN said he hoped they would not tie their hands in the wrong place. He did not wish to impose any restrictions on Galveston, but it might be found from experience in the future that to do so would not have been unwise. There was no proposition to force registration on the City of Galveston, but rather to leave the question in such condition that Galveston might have registration if the people of that city so desired. He renewed Mr. DeMorse's motion. He said he knew that no suggestion that came from any source in opposition to the popular will of the Convention would have any chance of success.

MR. DOHONEY favored the original clause.

JUDGE BALLINGER said the question of registration was a very odious one and mainly so because they had had a very iniquitous registration law. But there was a very unfounded prejudice against registration. He said occasions might arise when it would be required, and thought a wise system of registration in towns and cities might be useful.

MR. FLOURNOY said he regretted to oppose the views of Judge Ballinger, but he was compelled to deny that registration would preserve the purity of the ballot box. Registration had originated in New York, and the name of Tweed ought to be sufficient censure. The amendment was aimed at Galveston, since she was the only city with 25,000 and upwards. If necessary, he could put the registration manager of Galveston on the stand and prove that 500 fraudulent voters had been registered in one day, despite his vigilance. His people were freemen, and he protested, especially since the suffrage throughout the State had been made free against any voter being liable to disfranchisement. Mr. Ballinger was personally very popular in his city, and yet both that gentleman and himself had polled a very small vote in the late election for delegates. The people would not turn out, and it was only in times of great political excitement that they would turn out. He knew that he represented the sentiment of the people of Galveston when he said that they wanted no registration.

MR. NUGENT said he protested against Mr. Flournoy's construing everything as an attack on Galveston. Why he did this, God only knew. Registration was a good thing for cities, and he favored it.

JUDGE REAGAN said Mr. Flournoy could not deny that other cities had the right, and might want to exercise it in the future, to regualte matters respecting property, themselves, etc., and he had no right to assume that Galveston was the city referred to, or that the Convention was making an effort to force registration on Galveston. When a man was so dull as not to understand a proposition, he was sorry for him; but, when endowed with reason, he assumed to force a construction on the Convention in opposition to the plain intent of the words, he experienced another feeling respecting him. He was tired of such conduct, and should express his disapprobation of it every time. The question was, whether the people were incapable of self-government, incapable of determining their own interests, and of protecting them. It was assumed that the members of the Convention were wiser than the future millions of Texas for all time as to what should constitute the organic law.

JUDGE BALLINGER said his colleagues had indulged in a very wholesale denunciation of registration wherever it had been tried. It had been rejected so far as the State had been concerned, but that fact constituted no argument against its being adopted in the City of Galveston or any other city at some future time. Neither was it the experience of this country that registration in cities or towns was injurious, for there was not a larger city in the United States which had not adopted, in some form or other, a system of registration. It was true that fraud was practiced in spite of registration, but more would be practiced without it. Judge Cooley admitted the propriety, and even the necessity, of registration. The new Constitution of Missouri, though opposed to an odious system of registration that would enslave the people, yet made it incumbent on the Legislature to provide a general registration in cities and counties. In cities where local option laws had force, it was necessary to have registration to determine what constituted a legal majority. It was unwise to say that there should be no registration. Again, in cities where it was proposed to subsidize corporations, it was unjust to tax them by votes which were not legal. Galveston had 6,000 votes on her lists at the time of the last election, and although there was no registration required, and no one opposed the voting of any citizen, only a very small vote was cast. He held that that was an argument for registration and not against it.

Mr. Flournoy said that the argument in regard to subsidies was a dead one. The Legislature would be directed not to allow cities to subsidize any one.

Mr. Robertson, of Bell, said the amendment would be sustained. He thought it was a move in the right direction. He agreed with the gentleman from Galveston (Mr. Flournoy) that the people had had enough of registration, but this amendment referred to a very different matter. It was right, and the people demanded that the cities and towns should be protected in some manner or other. Many delegates had come instructed to control local authorities with respect to their action with corporations. He wished to leave the people of Galveston and other cities in charge of their own governments, and wanted the people to have the power to control them as necessity might require. The men who owned property in the cities were the men he proposed to stand by, and he hoped the amendment would be adopted.

Mr. Abernathy said he was tired of registration in any form.

Colonel Crawford moved to amend Judge Reagan's amendment as follows: "that no registration shall be enacted for any city, except on the consent or request of said city."

The amendment was accepted and adopted.

Mr. DeMorse said that on the preceding day the Convention had acted hastily on some matters of grave importance and not with the dignity befitting such a body; that he had proposed in different form the substance of the substitute for Section 3 offered by him the day before, and had the approval of many members, and trusted the

Convention would adopt it. He proposed the following as a substitute for Section 3:

"SECTION 3. All qualified voters of the State, as hereinbefore described, who shall have resided for six months immediately preceding an election, within the limits of any city or incorporated town, shall have the right to vote for mayor and all other elective officers; but in all elections to determine expenditure of money or assumption of debt, only those shall be qualified to vote who pay taxes on property in said city or incorporated town; provided, that no poll tax for the payment of debts thus incurred shall be levied upon the class debarred from voting in relation thereto."

MR. KILGORE moved to lay the amendment on the table. His motion was lost by a vote of 19 ayes to 63 nays.

Mr. DeMorse's substitute was adopted by a vote of 57 to 19.

GENERAL WHITFIELD offered the following amendment: "provided every qualified voter shall vote in the precinct where he resides."

MR. KILGORE offered the following substitute for the amendment: "strike out after the word 'voters' all words and insert, 'shall vote in the precinct of his residence.' " Accepted by General Whitfield.

The question on the adoption of the amendment was put and it was adopted by a vote of 45 to 32.

The article was then ordered engrossed.

## *Education*

MR. H. CLINE, of Harris, presented a minority report on education. It differed from the majority report in that it provided specifically that the Legislature should maintain the public schools for a term of not less than four months of each year, and put the school ages at from 9 to 15 years, inclusive. It provided further that, in lieu of the majority report of one-tenth of the general revenue for school purposes, "not less than one-fourth of 1 per cent tax upon all subjects of general taxation," this to be added to the income from school lands, bonds, etc., for the support of a public school system.

One hundred copies of the Cline resolution were ordered printed.

MR. DOHONEY moved to amend Section 1 of the majority report by adding, "for at least four months each year for the instruction of all scholastic population between 9 and 15 years."[60]

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[60] Mr. Dohoney proposed to accept the provision of Mr. Cline for length of term and scholastic ages, but would have accepted it as an amendment to the majority report section.

MR. RUSSELL, of Wood, offered the original minority report as a substitute for the majority report. It had been presented seven days earlier, and was signed by Mr. Sansom and three others. It proposed to forbid the State to levy a tax to support free public schools, and would have distributed the income from the lands and bonds belonging to the school fund among the counties, to be used for the education of indigent orphans only. Mr. Russell spoke as follows in support of his position:[61]

"Mr. President, I offer the minority report on education as a substitute for the majority report and article. I offer this amendment and substitute for the purpose of testing the decision of this body, this representation of the people of Texas, as to whether the people of Texas will be left free to raise their children and educate their children in their own way, or whether people who are able to raise families are incompetent to manage and educate their children. I have for the last twenty-five years combated the idea that the Government had the right to lay their hands on the money of the people for anything but purely general revenue purposes. A state, nation, or empire has no right to touch one farthing more than is required to support the three branches of Government, and when the Government claims such right, and exercises any such right, and wrings out the pockets of the poor, hard-working people, I contend that they have the same right to take the money to clothe, shoe, and support their neighbors' children. I hold that a man has the right to everything, except a pittance to support the Government, and when the Government takes it for any other purpose his natural and inalienable rights are violated, and the nation that does it is destined to sink and be lost.

"In my opinion this is the gravest subject, the most solemn and grave subject the people of Texas have to decide upon. Upon it hangs the weal or woe of Texas. The God of Heaven has granted him the privilege of raising a family. If we recognize that, and if we decide that he has the right to educate his children as he pleases, that action will go down in history as the proudest moment to the wisdom of this body. But if, on the contrary, this right is denied, I can see in it dangers which threaten to overthrow free government. There is no doubt that when the present Constitution was inaugurated, the party in power knew that then the children of the State were to be educated into monarchial ideas. The whole point and object of it was to blot out the original principles of free government and establish a strong central monarchial government. This same principle is in this majority report, and it is the principle I am fighting.

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[61] Mr. Russell's remarks are taken from the *Galveston News* of October 13, 1875.

The tenth of the revenue it is asking for is a mere pittance, it is true, but if one-tenth can be taken all can be taken, and the money used to buy just such books and apparatus as was used under the late administration—such books in use and such men in power as the people of this country had no knowledge of; books that made the children hate the doctrine their fathers and grandfathers contended for and fought for. Have you ever looked into it to see that under this law, this majority report, your children could be seized upon by the authorities, dragged out and placed in the power of just such men as they may desire? Now, gentlemen, I hope that with the vast amount of the educational fund, the lands, the moneys, and the United States bonds, and the money to be derived from the sales of public lands, with about sixty million acres of school lands —I ask, if with all this we may not stop this principle of taking money out of a man's pocket to educate his own and his neighbors' children? . I favor, as I believe the Convention does, turning over county school lands to counties. I favor the system in the minority report. The public domain is ample to educate every child in the State. I am willing to give half of it, if necessary."

(And more in the same strain.[62])

GENERAL WHITFIELD answered in behalf of the majority of the committee:[63]

He said: "Mr. President, though in feeble health, as Chairman of the Committee on Education, from which have been presented a majority and two minority reports, I feel compelled to give expression to my views on the momentous question now before this body.

"I will avoid all trite expressions about the perpetuity of free government resting upon the intelligence and virtue of the people. These points are conceded by every one who has the capacity to think.

"These premises being conceded, the grand problem to be solved by this Convention is, how can we best obtain the desired end? The answer involves the whole question and demands the scrutiny of every member of this body. There are two extreme views on the question, each advocated by able and conscientious gentlemen, to neither of which can I subscribe. The one view would substantially refuse to do anything to promote through State agencies the education of the children of the State. The other would go too far in the opposite direction, by imposing upon the people of today burthens which would be not only unjust but also unwise. There is, I am assured, a medium ground upon which all can unite and accomplish the greatest good possible within our reach.

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[62] The *News* reporter had apparently become disgusted with the argument. He stopped, it would seem, in the middle of the speech, and appended the above parenthesis.

[63] General Whitfield's remarks were printed in full in the *State Gazette* for October 12, 1875.

"Mr. President, it would be unjust to impose upon our present population too great a burthen for the purpose of maintaining free public schools for an arbitrary length of time in each year. Let us rather look at the means we have, and see what we can safely and justly do with the means at our command, without imposing too heavy a burthen on the present population of the State. All will admit that we have so laid the foundation for future endowment and development, that in a few years Texas will be largely ahead of all other states in her educational fund; the land grants already secured are enormous. Each county of the State has of its own right, four leagues or 17,712 acres of land dedicated by the wisdom of the fathers of Texas to educational purposes. These lands, so far as most of the old counties are concerned, are valuable now. Three of them at least—Fayette, Harris, and Ellis—have the lands in their own borders, and can sell them at once at high prices, especially Fayette and Ellis.

"It is not doubted but this Convention will allow the respective counties to dispose of these county lands, through their county courts, as they deem best, and that the interest on the proceeds may be used annually as an available school fund. In this way most of the old counties will be greatly relieved at an early day. We then come to the general fund, based on the alternate sections of all lands granted to railroad, canal, and other companies, amounting in the grand aggregate to about sixty-four millions of acres. It is true that a large part of this munificent endowment is prospective in actual value, being land on the frontier and requiring time and the expansion of population to give it cash value; yet, it is equally true that much of it is now so situated as to command a fair price from actual settlers, so that, under the law of the Fourteenth Legislature, we may rely upon a rapid annual increase of the educational fund from that source.

"The great difficulty is the want of a sufficient available fund for the time being, from the interest of which to sustain common schools, until the interest on the proceeds of these bonds shall be sufficient to sustain such schools without any direct taxation of the people. We all look forward to the early day, possibly within five or six years, when this land fund will be sufficient to meet this cherished desire, and taxation for schools will be no more.

"But, Mr. President, until this auspicious day arrives, I hold it to be our duty as patriots and statesmen having in view the welfare of the State, to assume such reasonable burthens, by way of taxation, as can be imposed without serious hardship upon the people. Precisely how far we may justly go in this direction, it is impossible for any man to say; but, sir, after calm deliberation, a majority of the committee determined to follow the example of our illustrious predecessors in the Convention of 1845, believing that the people of today, as of that period, would cheerfully sustain the work inaugurated by Rusk, Hemphill, Anderson, Lipscomb, and the eminent men who shed luster on Texas in that memorable convention.

"I dissent, Mr. President, from some of the opinions so clearly and boldly announced by the gentleman from Williamson (Mr. Sansom) and the gentleman from Wood (Mr. Russell). However, as an abstract proposition, it may seem unjust to tax one man to aid in giving a little education to the child of his poorer neighbor, sometimes the child of the struggling widow—often to the orphan, without either father or mother—yet, sir, another great principle is evoked by the suggestion. It must be classed among the abstract rights, based on apparent natural justice, which we individually concede to the State, for the general welfare, when we enter into a great compact as a commonwealth. I boldly assert that it is for the general welfare of all, rich and poor, male and female, that the means of a common school education should, if possible, be placed within the reach of every child in the State; and it is upon this exceptional, yet well established, ground that a general levy for educational uses is justified. We do not propose compulsory education or the slightest invasion of the right of the parent over the control of his child. That right is sanctified by the laws of nature and of God, and may not be invaded by any human power; but the duty to place the means of knowledge, so far as to secure an intelligent citizenship, within the grasps of all is a different thing. It is no invasion of parental right, but a high and sacred duty, because it directly promotes the general welfare.

"Our actual available school fund, commencing with the adoption of the proposed Constitution, even with one-tenth of the annual revenue, will fall short of what we should desire for two, three, or four years to come; yet by judicious legislation under the proposed plan, it will do a vast amount of good. By the sales of land it will materially increase each year and within the scholastic years of thousands of children now under 10 years of age, Texas may have one of the finest school systems yet seen in this or any other country.

"I know full well, Mr. President, that the people of today after four years of devastating war followed by years of bad government, and until recently of oppression, should not be unreasonably burthened for the benefit of posterity; but, sir, I have endeavored, however feebly, to draw a plain line between the extremes on this subject. Let us do that which we may in prudence and justice now, and leave time and the people, through the Legislature, to develop and carry on such a system as experience may prove to be just, wise, and best for our descendants."

MR. DOHONEY spoke in favor of the majority report.[64]

He said: "Mr. President, the perpetuity of free government depends upon the intelligence and virtue of the people. I had not supposed that gentlemen here would call that proposition in question. Sir, when we say that the perpetuity of free government depends upon the virtue and intelligence of the people we say that the great mass of the people will not be capable of perpetuating their liberties unless they are an intelligent and virtuous people. The statistics of crime show this. The real question is one which the gentleman from Wood has totally misconceived. It is not that we proposed to establish the Prussian system of compulsory education, or even such a system as was established in this State in 1871. It is not a question of whether men are to be deprived of any of their natural rights, that the rights of the parent over the child are to be infringed upon. We all contend for these rights. But if we admit any proposition already laid down, and we refer to the statistics of crime, we find that the virtue of people depends upon their intelligence, that the great mass of crime is owing to ignorance, and where most crime and most ignorance prevail there you will find the most expensive systems of criminal law. It therefore becomes a practical question of economy whether it is not better to encourage general intelligence in the interest of safety and economy, whether it is not better for the State to educate the children for their own good and for the welfare of the State. Carefully prepared statistics show that the large mass of inmates of prisons are uneducated. In France in a given time whole number of arrests were 444,133; of this number 442,000 were unable to read or write. In England in a given time the arrests were 187,000, of which number some 152,000 could not read or write. In the states of New York and Pennsylvania and the Northwestern states 33 per cent only were able to read or write. In our own State the report of the inspector of the penitentiary for 1874 shows that they received 728 State convicts, of which number 554 possessed no education whatever, 70 a little education, could read and write a little, and only six had a good education. In 1875 there were received 976 State convicts. Of these 760 had no education, 198 a little education, and 18 a good education. Only 90 of the whole number were temperate. So it appears that nine-tenths of our convicts are from the ignorant classes.

"Now, going back to our maxim that the perpetuity of free government depends upon the virtue and intelligence of the people, it appears that if all the children of the State had parents or guardians who were able and willing to educate them, a vast amount of expense would be saved the State in the trial and maintenance of these convicts, and there would then be no necessity for this system of public education. I concede it would be better to have the children educated and rendered virtuous by a system of private education; but when we look abroad in the land and find the large number of orphans, and large number of children of the poor people, and the large per cent uneducated, the large number which private education can never reach or benefit, and ignorance growing up with crime and vice and intemperance, we know well that nothing short of public education will reach the case. We have waited a long time for private charitable institutions, but with little result, and with these long lists of statistics still presenting themselves. It then becomes a plain, practical question, whether it is cheaper to educate them and render them industrious, virtuous citizens and intelligent voters, or to go to the expense of trying them, putting them in prison, and punishing them. I am willing to admit that if we could have them educated by private means it would be better. But there is another important consideration. By the action of the United States Government and people, universal male suffrage has been established. and yesterday upon this question of suffrage, this Convention decided by more than two-thirds vote, that universal suffrage should have full swing. The action of the United States in clothing all this ignorance with power, in declaring that crime and ignorance shall have its voice by vote, admonishes us of the dangers to free institutions through the power of all this ignorance.

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[64] His remarks were printed in the *Galveston News* of October 13, 1875.

"Now the object of this amendment is to force the Legislature to provide education for the children, saving the expense of trying, supporting in jail, and supporting in the State prison those, who through lack of education, become criminals. It is true that the minority report here proposes to reach the indigent orphan children of the State between the ages of 8 and 16; but will any gentleman explain how this proposition is practical, how this class of children can be educated without injustice to others? The poor men will be found too proud—hundreds of them too proud—to say, 'I am too poor to educate my children, they are indigent children'; and they will not get any of the benefits, while the children of idle, intemperate, and vicious parents will be educated. It should be left optional for people to educate their children in private or public schools, as they may choose. I am glad that the majority of the committee have recognized the great principle to which I first referred. (Reads first section of the report.) That is the very proposition I have stated. But here they acknowledge the duty to provide these means of education, and yet make no adequate provision to enforce it, leaving it indefinite. Now the interest of the bonds belonging to the school fund is about—

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|---|---|
| Say | $125,000.00 |
| One-tenth of the revenue | 175,000.00 |
| Poll tax | 200,000.00 |
| Total of | $500,000.00 |

"Scholastic population of Texas is about 300,000. With $500,000 as the utmost available school fund available annually, it would provide for public schools of only one and a half months duration. By my amendment the number of children to be provided for would be 150,000. These children could be educated four months in the year for $1,000,000. Is it not our duty to provide for their education? I agree with the Chairman of the committee that the Democratic party must come squarely up to its pledges upon this question."

**MR. SANSOM** opposed the majority report, and condemned the exercise of the despotic power that would enforce direct taxation for the public education. He made an effort to show that crime was not attributable to lack of education, but to other causes.

**MR. ABERNATHY** opposed the amendment. He was willing to compromise on one-tenth of the annual revenues of the State for educational purposes. He said the people were financially embarrassed and could not afford more than that amount.

**MR. GRAVES** opposed the amendment. He thought the people were neither able nor willing to support the schools under the plan of Mr. Dohoney.

Upon motion of Mr. Chambers, Mr. Dohoney's amendment was tabled by a vote of 53 to 21.

## THIRTIETH DAY

### SATURDAY, OCTOBER 9, 1875[65]

**MR. FLOURNOY** rose to a question of privilege. He was informed that on yesterday, during the discussion of the question of restriction of suffrage in towns and cities that while either out of the hall or preoccupied with other matters, he had suffered a severe personal castigation at the hands of the gentleman from Anderson. He trusted that he had never used any such language as that ascribed. He was led away during the heat of the debate, for he must know that in a deliberative body like this he was going beyond his duty to do so; since no man in this Convention had a right to question the sincerity or the motives of any member for his action. He read an excerpt from the *Gazette* in which the language complained of was used. Mr. Flournoy said he held that any gentleman had a right to illustrate as broadly as his judgment dictated, the subject he was discussing. The remarks he supposed were drawn out in reference to the proposition by the remarks of Mr. Nugent, who suggested that the law applied to all cities of not more than 25,000. He did not charge that gentleman had any design in that, but aimed to show that it would affect Galveston alone, and it was to his remarks on that question to which Mr. Reagan's remarks had reference. He had never suffered himself personally to criticize Mr. Reagan, or any other gentleman on that floor. He trusted Mr. Reagan did not then mean, and did not now mean, to question the sincerity of his motives or the perfect good of anything he had said or done in that Convention, and would like him to explain.

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[65] The proceedings for this day were taken from the *State Gazette* (Austin), October 10, 1875.

JUDGE REAGAN said if Mr. Flournoy had been present he would have seen that there was no occasion for the remarks he had just made. He did not criticize the argument, and stated, as a reason, that he had argued the proposition as if the Convention intended to force registration upon the people of Galveston. In reply to that he alluded to the fact that the motion was that registration should be allowed to those cities desiring it, and that the Legislature should have power to grant such permission to any city over 10,000 inhabitants. On this matter he did say that the assumption of Mr. Flournoy was not warranted by the record, and could only succeed on the supposition that the members were too dull to understand the question.

He stated that the question was not the one presented by the gentleman, but whether the delegates of the Convention knew what was best for the interests of the people of Texas. As to his motives, he did not concern himself about those, but, as regarded his argument, he felt it his privilege to say what he did, that a wrong impression might not go out to the country. His remarks had nothing to do with criticizing his motives. It was his argument, and not his motives, that he referred to.

MR. FLOURNOY said he was glad to have heard the explanation. He knew that the honorable gentleman from Anderson did not intend to criticize his motives, but from the reports in the newspapers, and the impression on the minds of some of the members, he had felt constrained to refer to it. While he had occasion to differ with gentlemen frequently on that floor and elsewhere, no one could say that he had ever gone outside the record to criticize any gentleman personally, and hence he felt surprised that Mr. Reagan's language should have been capable of misconstruction.

JUDGE REAGAN said that everyone would admit that had he desired to be personally offensive he knew how to be.

MR. FLOURNOY said it was well known that he was perfectly amenable for anything he said or did, and that he was always ready to retract when in the wrong. If he had wronged a man he was the frankest man in the world in admitting it. Mr. Reagan had nothing personal against him, nor any supposed wrong, that he should use personal language. Mr. Reagan was not the man to do it in connection with this body, but without disturbing the action of this body, would have sought to personally satisfy himself respecting the matter. He was perfectly confident that Mr. Reagan did not mean the construction sought to be put upon his language, except that his argument was faulty. He admitted that his arguments were sometimes faulty, and that he was very often wrong in both his premise and conclusion. He did not dispute the right of anyone to attack his argument, and was perfectly satisfied that that was all the gentleman from Anderson intended.

MR. MARTIN, of Navarro, also rose to a question of privilege. He said that he regretted that on the previous morning remarks should have been thought necessary to be made respecting the *Statesman.* He liked to see a bold, independent press, but not an impudent press. He thought it would pass away as left yesterday after gentlemen had risen in questions of privilege, but this morning the *Statesman* was more impudent than ever. It now contained a direct charge, and named gentlemen of the highest character, calling on them to substantiate its assertions and prove that every member who was a Granger, except nine, had entered into a compact, an unholy alliance, with the minority in the Convention. He was a Granger, and so were his two colleagues from the Ninth District, and if anyone asserted that he or either of them had entered into a compact with the minority or anyone else, he had most foully lied. He knew no Granger on that floor as a Granger, and did not know that any Granger had concerted with a minority, but no Granger could control his vote or action. The charge was infamous. He asked leave to introduce a resolution. The resolution was as follows: "That the

President appoint a special committee of seven to inquire into the direct charges of the *Statesman,* that all Grangers, except nine, of this Convention, have formed an alliance with the negroes and radicals of this Convention; and that the vote upon the suffrage question was the result of said alliance and that no member of the Grange or radical party be appointed upon said committee."

MR. CHAMBERS said it was he who proposed the amendment to strike out, in the report of the Committee on Suffrage which elicited the discussion. He was a Granger, but how many had known it before? If a half dozen members on that floor knew it, he wished them to rise and say so. His district was composed of over 10,000 and not any except half dozen knew he was a Granger, during the entire canvass. He had not used its influence then and much less should he use it now to form a compact with negroes and radicals. For himself, he denied it, and he felt called upon to say so; because he introduced the amendment that led to the debate. His constituency was a respectable one and a charge of this sort not only affected its delegates but his constituency itself. The Grange was not a political institution, and had members in it belonging to both the great parties of the country. Who then assumed that they could be led by an Ajax on that floor in any direction? He did not know who were and were not Grangers on that floor. He had too much respect for the constituency he represented and the members on that floor to make such an inquiry.

GENERAL ROSS said he would explain briefly what he knew of the matter in controversy. To bring the matter at once before the body, he would state precisely what he knew of the matter between Johnson, of Collin, and Mills. He attached no importance to it himself, but would call on Johnson, of Collin, to explain. He considered that the remarks that were made were thoughtless and inconsiderate. He thought they were calculated to do great injustice to the Grangers, who were a worthy body of men. Immediately after the occurrence, he had called attention to it, and advised the gentlemen to correct the impression, as it would probably be used against him to manufacture capital.

As to the *Statesman*, all he had to say was that he recognized the full scope and tenor of a public journal to criticize public men or their actions, but when it seized upon a conversation, and proceeded to criticize worthy men on this floor, among them the honored President of this Convention, it exceeded its mission. He could not see that such was the mission of a Democratic paper, to interrupt the work of the Convention, and array gentlemen against each other on the floor, and create a sentiment adverse to public interests. 'Twas like the poisonous adder that seeks shelter in the noble lion's mane to sting him to death. He related the anecdote of an ungainly preacher, of whom it had been remarked, that while he might be a good exhorter, he had the most ungodly walk that was ever seen. If the *Statesman* was a Democratic paper, it had the most ungodly way of showing it he had ever seen.

JUDGE REAGAN said as he had been made a witness on the stand, he would have to testify. He read extracts from the *Statesman*, and then explained that yesterday morning, as he was walking in the rear of the Capitol, he passed several gentlemen, among them Mr. Nugent, Mr. Whitfield, and others. The editor of one of the papers in the city was present, and a conversation was going on in reference to what had been charged in the *Statesman.* Some one said that General Ross had stated that a bargain had been made between the Grangers and the Republicans to carry certain measures. He, Reagan, then said if such a bargain had been made, that the dignity of the Convention had been degraded, and in duty to the country it ought to be denounced and exposed. He did not say that the bargain had been made. He denied that any one had the right to transfer the Grangers and use them as he pleased. He would now say what he had not said before on the floor, and what but few knew, that he was a Granger himself. He had not come there as a Granger, was not elected as a Granger, and, so far as he was concerned, he expected to represent his whole district. One man had announced himself, during the canvass as a Granger, in order to obtain office, and had been, as he should have been, ignominiously defeated. The Grangers had refused to touch him, and that was the only instance on record in the State. He, Judge Reagan, was a Granger, but not a political one, and did not belong to any secret organization. He could not deny that an impression had been produced derogatory to the Convention, and that there was some ground for the position assumed by the *Statesman*, as it had been said, in the presence of one of the editors of that paper, that an improper coalition had been formed between the Grangers and the Republicans. The editor had deemed it his duty to call attention to the matter, but it would be their duty to see the patriotism and integrity of the Convention vindicated.

GENERAL WHITFIELD said he had but a few remarks to make. One day, about a week since, he had a conversation with General Ross, and was told that a gentleman had proposed to Mr. Russell, of Harrison (who was a Republican) that if he, Russell, would give him thirteen Republican votes to control the suffrage matter, he would give him enough other votes to control other matters that might come before the Convention. He, Whitfield, became mad, good mad, when he heard it. He recognized his duty to his constituents, but as he had said yesterday morning, when he left home he had left his Grangerism and regalia behind him, and came to Austin as a Democrat, and his votes were cast as such, and not as a Granger. When he had first heard of this conversation, he had threatened to denounce it on the floor of the Convention, but was over-persuaded not to do it, being told that Mr. Johnson, of Collin, was only joking, and had found out since that it was only a joke, but he must say it was very serious. The remarks of the *Statesman* were utterly uncalled for. (Here he read an extract from the *Statesman*, in which it was said that General Whitfield had risen the day before with mock, heroic solemnity, to say he knew nothing of the alleged combination.) "Mock solemnity," that was good, and if any one thought that he indulged in mock heroism, let them try him, that he always held himself personally responsible for all he said.

REVEREND JOHNSON, of Franklin, said he considered the abuse of the *Statesman* as an advantage to a public man. He called on any member present to say if he ever expressed himself as a Granger. So far as the remarks of the *Statesman* were attributed to Mr. Johnson, of Collin, he believed the remarks of that gentleman had been said as pleasantry in the public assembly; and that no one considered him as being in earnest.

MR. JOHNSON, of Collin, said he supposed he had been the cause of all this trouble, by a peculiar remark made in the presence of fifty men. It was all a joke, and nothing was meant by it. The *Statesman* had first set out, during the canvass, that there should be no politics in the Convention. When he came to Austin the Republicans seemed friendly, and he did not feel disposed to kick them out. As he walked down the aisle the other day, Mr. Flanagan came after him, and he jokingly remarked to him, "You had better not follow me," when some pleasant remarks ensued. There was a "power behind the throne" in all this, and it was because they claimed to represent the people and not to build up a few broken down editors. Every man knew that what he had said regarding a treaty with Republicans was a joke.

MR. COOKE, of Gonzales, announced himself as a Granger and defended the organization. He did not know a dozen Grangers on the floor. They were not a political organization. He had always fought secret political organizations, and would not belong to the order of Grangers if it was one. He did not deny that politicians had joined the order for self-promotion, but they would be deceived. Whenever it became a political organization, he would leave. He knew nothing of the charges as stated, and being a Granger, he did not desire to be placed on a committee proposed to be raised. He knew of no bargain. The Grangers were not consulted as to how they should vote.

MR. FLANAGAN said he found it had become necessary for members to purge themselves of any connection with a supposed contract that was said to exist between the Grangers and the so-called negro or radical party of the Convention. It was not necessary for him to make any explanations as to his course on the floor, for he took it for granted that he was above suspicion, and would not enter into any collusion for the purpose of passing any measure, or of defeating any measure that might come before that body. In justice to himself and the Republican party, his colleagues, Colonel Russell, Colonel Mills, and himself, he felt called upon to make this statement, as they (Russell and Mills) were the only two members of the Republican party that had been named in connection with the alleged collusion, compact, combination, bargain and sale question, as it had been termed. Whatever they had done, he pledged the Convention his word of honor, that he had never heard of it before, until he saw it yesterday in the *Statesman*. If there were any contract with his aged friend, Mr. Johnson, of Collin, he had never heard of it. He acknogledged the great ignorance of the Republican party in Texas, and the ignorance of the gentlemen who proposed to represent them in the Convention, but it certainly was humiliating to him and the gentlemen of the Convention to believe that they could be led by the gentleman from Collin, or form any compact with him. He, Mr. Johnson, had said that he, Mr. Flanagan, had treated him friendly. He thanked God that he had been educated to respect age, and to treat every gentleman respectfully, as he deserved to be treated himself. He found Mr. Johnson to be an open, frank, gentleman, and though he may have said some things in a jocular manner there was nothing serious meant. He believed that he was too honorable a man to form any compact with Republicans, or any party, to carry any measure in this body.

He denied that there was any one authorized to make any contract by which the fourteen Republicans in the assembly could be ruled on any measure. No man had ever controlled his vote, except he thought it necessary to follow leadership. If the *Statesman*, or anyone, could prove that the fourteen Republicans had made such a contract, they, the members, could move the names of the Republicans to the head of the roll-call, and then they would have a dead sure thing on keeping them in the minority.

MR. WADE said he knew of no collusion between the Republicans and Grangers. There was a conversation between Mr. Johnson, of Collin, and Russell, of Harrison. It had been called an ungodly joke, and he thought it was, but as he regarded it it was not binding on him or anyone else. He was a Granger, but did not know until that day that there were six Grangers on the floor of the Convention. During the conversation referred to, some one had said to him, "Can you stand this?" To which he replied: "I vote for Wade alone!"

MR. NUGENT said he had defeated his opponent in his district because of the fact that he was trying to make capital of the fact that he (his opponent) belonged to the Grange order. He knew nothing of any proposed contract between Republicans and Grangers. He was present at a conversation between Mr. Wade, the representative of the *Statesman*, himself, and probably some others. It was then stated that some kind of an arrangement had been entered into between the Grangers and the Republicans, in order to get a working majority and carry measures. He expressed his surprise at it. Mr. Wade stated that a member of the Republican party had asked him if he could stand this, and he had replied: "I vote for Wade alone, and nobody else." In this conversation between the editor of the *Statesman* and the other members of this party, it was stated that the proposition had been seriously made, and he, Mr. Nugent, had denounced it in unmeasured terms, and still denounced it, but from the explanation made that morning, he believed it all a joke.

MR. ROBERTSON, of Bell, said the length of the statement, and the character of the explanations made, required him to say something. While he did not propose to say whether he was a Granger or not, he desired his constituents to know that no contract had been made between him and anyone else.

MR. FLEMING said he was opposed to the passage of the resolution, and did not consider it the duty of the Convention to investigate any newspaper charges. He said if they stopped to investigate everything a newspaper said, and raised investigating committees, they might be there for months.

MR. DILLARD said he had never before proclaimed himself a Granger, and denied anyone having the right to control his vote on any question. He regretted that Mr. Johnson, of Collin, had so forgotten himself as to attempt to speak for the Grangers or the Democracy, or the Republican party of the Convention.

MR. BRADY said he did not consider the *Statesman* of sufficient importance to control or ruffle the temper of the Convention. He was present at the conversation that had so stirred the bile of the *Statesman*, and had regarded it as a joke at the time, and had laughed at its ridiculousness.

MR. DEMORSE said the whole foolish matter was out of place, and unworthy of the consideration of the body. He insisted that Mr. Martin, of Navarro, should withdraw his resolution. The delegates had been chosen with regard to their honesty and fitness, and not because they were or were not Grangers.

MR. MARTIN, of Navarro, refused to withdraw his resolution.

MR. RENTFRO said he was a native born Texan and a Republican. He protested against the language used by individual members. Many epithets had been hurled at Republicans that were unnecessary and unkind. They had been spoken of as "radicals, negroes, etc." The resolution was not couched in respectful terms toward the minority on this floor, it having designated them as "niggers and radicals." He knew of no such alliance as was claimed.

MR. WEAVER said there were a great many Grangers in his county. He knew of a person who ran for office and called a Grange meeting to address them in hopes of obtaining their votes, and had denounced him (Mr. Weaver) as a lawyer. The gentleman in question was defeated by three or four hundred majority. He was led to believe from this fact that the Grangers were, as they claimed, no political organization. The press had the right to criticize public men, but if the Convention took official notice of the criticisms that were made by the public press they would always be kept busy.

MR. DOHONEY thought it was beneath the dignity of the Convention to be noticing all the newspapers said. He defended the liberty of the press, but thought that when censured by it, it was a waste of time to make such a noise about it. He was no Granger, but believed their objects were good, and had been voted for by great numbers of them. He, as editor of the *North Texan*, had advocated the principles they did before there was a lodge of the order in the State. There was no ground for the charge that had been made. It was a mere idle, good-natured conversation that had occurred.

MR. BROWN said he was in favor of the freedom of the press and not the licentiousness of it. He thought the whole matter had gone far enough, and was not worth noticing any further.

JUDGE BALLINGER thought the Convention was traveling outside the record. If they investigated this charge they might have to investigate others at a great cost of time and expense.

COLONEL CRAWFORD offered the following amendment: "That said committee be authorized to send for persons and papers, and to administer oaths and take testimony, and that the report of said committee contain simply a statement of matters and things as they transpired in fact; and that all deductions and conclusions be left to the Convention and the country." Adopted.

MR. STOCKDALE moved to amend the resolution by striking out the words "negroes and radicals" and insert the word "Republicans." Adopted.

MR. MOORE offered to amend by adding "and that in determining who are Grangers the President shall be governed by the usually accepted signs." Ruled out of order.

On motion of Mr. Flournoy, the whole subject matter was laid on the table.

MR. WEST moved to reconsider the vote engrossing the articles on suffrage, and to pass the motion for the present.

MR. SCOTT moved to reconsider the vote tabling the resolution of Mr. Martin, of Navarro, to raise a committee to investigate the charges made by the *Statesman.*

It was carried by a vote of 48 to 18.

The resolution was then adopted by a vote of 46 to 23.

Memorials from some half a dozen counties were submitted without reading.

The education minority report, as the substitute for the majority report was lost by a vote of 19 to 46.

MR. DOHONEY moved to amend Section 6 of the majority article by adding "and proceeds of those lands, when sold, shall constitute a part of the school fund to which the lands belong."

MR. SCOTT offered an amendment, "The Legislature shall provide for the sale of county school lands to actual settlers, in lots of 80 and 160 acres, prices to be fixed by commissioners, and actual occupants of such lands shall have the right to take the lands at the prices fixed."

MR. NUGENT suggested an amendment that county courts be authorized to sell the lands.

MR. FERRIS offered a substitute for all the amendments, which was withdrawn after arguments.

MR. DARNELL thought it a hardship that actual settlers should be allowed nothing for their improvements. The lands in his county (Tarrant) belonging to other counties had about two hundred settlers upon them; it would work a hardship upon these men who had by their labor rendered them valuable, to put them at the mercy of speculators by throwing the lands upon the market without allowing the settlers to offset the value of their improvements.

MR. SCOTT held to a like opinion.

MR. FERRIS and MR. DEMORSE desired the settlers actually owning the lands protected.

On motion of Mr. Ballinger, the section was laid on the table until the Committee on Counties and County Lands should report.

**Mr. Wade** presented a substitute for Section 4, and made an able speech for the public schools.

**Mr. Ramey** reported the engrossment of the article on executive department.

## THIRTY-FIRST DAY

### Monday, October 11, 1875[66]

### *The Free School Question*

**Mr. Sansom** submitted the following as a substitute for Section 3: "That there shall be set apart not more than one-tenth of the annual revenue for school purposes and a poll tax not to exceed $2, and no person shall be allowed to vote at any election in this State unless he has paid such poll tax."

Mr. Sansom's motion was tabled by a vote of 52 to 26.

**Judge Ballinger** proposed as a substitute to Section 3 a tax of one-fourth of 1 per cent on all taxable property of the State, or so much of said tax as together with a poll tax of $2 per annum and the other funds provided for school purposes as should be sufficient to educate all of the scholastic population four months each year, and making the payment of a poll tax a condition precedent to the exercise of the suffrage. He said he thought the State was able to make such a provision and that it would accomplish more for the well-being, and would add more to the wealth and prosperity of the State than any other means that could be adopted. If members of the Convention failed to pass some such provision they would be failing in a great public duty.

**Mr. Robertson**, of Bell, said this would increase taxation one-fourth of 1 per cent over and above the ordinary expense of the Government, and he protested strongly against it. He said he had come to Austin with a view of obtaining a reduction of the expenses, and not of increasing them, and of levying no tax beyond what was necessary for the ordinary expenses of the Government. His people were not able to bear further taxation. Until they could determine the capacity of the people to pay, no attempt ought to be made to increase their burden.

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[66] The proceedings for this day were taken from the *State Gazette* (Austin), October 12, 1875.

MR. ALLISON said that so far as he knew his constituents they would oppose any increase of taxation for the purposes set forth in the Ballinger amendment. There were three parties in the Convention on the question before them—one against all taxation, one for small taxes, and one for something like the Ballinger substitute. He thought the people were opposed to that or any other magnificent school system. He thought that in time a magnificent common school fund would be had; but he thought that for the immediate future one-tenth of the general revenue would be sufficient to encourage and build up a good system of public schools.

MR. BROWN said the amendment just read involved the same principle which had been discussed several times and repeatedly voted down. He said he could not subscribe to the feature of incorporating the payment of a poll tax as a condition precedent to voting in the Constitution. It was, he thought, only another feature of registration, and that registration had, above all other causes combined, caused the people of Texas to condemn their Government and cry out for a change. He was in favor of all wise reforms, but there was one thing sure, that their expense of Government were seven times greater than they had been before the war, and that was the great evil to be remedied by the Convention. There was no fact more patent than that the people were not as able as they had been before the war to bear the burdens of taxation. Before the war a person might have traveled all over the State and he would not have found one man in want, one man who did not own a home. Now, if one went all over the country what would he find? Hundreds and thousands who had come to Texas since the war had no homes at all. They were men who had sought refuge in the State.

MR. KILGORE moved to amend the substitute by striking out "one-fourth" and inserting "one-eighth." His motion was lost.

MR. RUSSELL, of Wood, moved to table the whole question, and it was tabled by a vote of 49 to 29.

MR. DOHONEY proposed as a substitute for Section 7, the appointment of the Governor, Comptroller, and Treasurer as a school board to apportion and distribute the available school fund among the several counties, and if this were insufficient, to provide for four months education each year for the scholastic population between 9 and 15 years of age; that county courts should have the power to levy a poll tax on every male citizen of 21 years and over, to be supplemented by an *ad valorem* tax on taxable property of not more than one-sixth of 1 per cent.

MR. SCOTT said he wanted to know if delegates were to be required to vote every day on that subject. Was there to be no end to it?

MR. DOHONEY replied that it was an entirely new proposition.

The special order—the legislative article—was postponed until the next day.

MR. DOHONEY said his proposition went as far as they could go in compromising. If the Democratic party was in favor of free schools it could not do less than what he had suggested. He explained the difference between his substitute and the majority report.

MR. DEMORSE offered the following as a substitute for the substitute: "It shall be the duty of the Legislature by the use of the available school fund including a poll tax of $2, which shall be used for educational purposes, to establish and maintain free public schools for such period of the year as the fund may be sufficient to accomplish, and the Legislature may authorize each school district in every county to levy and collect such a tax as a majority of the freeholders of the district may determine not exceeding one-fourth of 1 per cent. The available school fund hereinbefore provided shall be distributed among the several counties of the State according to scholastic population, the distribution to be made by the Comptroller." An additional section to come in as Section 8, was as follows: "Each county shall be laid off in school districts by the County Commissioners thereof, and one county superintendent, who shall have the examination of teachers, who shall be elected by all the qualified electors; and a board of school trustees for each school district, shall be elected by the qualified voters of the district."

MR. JOHNSON, of Collin, moved to amend Section 7 by striking out all of the section down to the word "year" in line 44, and inserting, "the Legislature shall establish free schools throughout the State as soon as practicable and shall provide by law that the available school fund, herein provided, shall be equally distributed among all the school population of the State."

**Mr. DeMorse** asked members of the Convention for a calm consideration of his substitute. He thought it would be found entirely free from any tangible objection. It contained the views he advocated during the canvass in his district, and he had never heard one person object to it. The difference between it and the report of the committee was substantial. The committee said that at some future day they would establish a school system. To this he wished to reply that they ought at least to keep some sort of semblance of a school system, and not push it off into the future and say, "we may establish a system when the school lands shall have acquired value." He admitted that the land endowment was the most magnificent in the world, but he was opposed to its sacrifice now, because it would be extremely valuable in the future. The system he proposed would at least give the poor boy, who could otherwise get no schooling, perhaps three months in the year.

**General Whitfield** said delegates had come to Austin with their minds made up in advance upon the subject of common free schools. They had ever been the idol of his heart. He had wished to see the great State of Texas enjoying a system of public education perfect and liberal. But finding in the Convention a great disparity of views, he had been willing to compromise upon the majority report as giving the best system that could be attained for a time. The committee, containing members of various views, had been content to agree upon the majority report. The majority had become convinced that one-tenth of 1 per cent was as far as the Convention was willing to go. The question was, he thought, the greatest that had come before the Convention. He thought the poverty of the people was too great for them to build up an adequate system of free schools just then. He wanted schools as much as any one, and had had one last year on his farm, to which others had subscribed $55, while he paid the remainder of $125.

**Mr. Cline** spoke next in favor of an adequate school system.[67]

He said: "Mr. President, I consider this the most vital, the most important question to be disposed of by this Convention. I think it is a great mistake to say the people do not want a public school system. That objections to it exist on account of local abuses cannot be denied. But from all parts of the State the cry comes up, 'give us public schools.' I have just received a letter from one of the most distinguished ladies of my county on the subject, and the latter is a wail of despair at the vote the other day against the school poll tax. It is very seldom I ask the attention of the Convention, but I hope I may be indulged today. As to the question of the right to impose taxes, I hold, with Daniel Webster, that it is a police question; that the State should expend money for the support of public schools for the same reason that it does to build penitentiaries. For the same reason that it builds jails it should have school houses. It is a complaint all over the country that the expenses of trying criminals are enormous. Then look to the character of those who are caught in the meshes of criminal law. They are all ignorant. Nine-tenths of them can't read. This system of public education proposes to carry enlightenment and morality to every child. It is part of the history of the Anglo-Saxon race. Alfred the Great established the first great seat of learning. Lord Bacon says that the Saxons adopted a system of public instruction in 1646, and in Scotland public schools were established in 1696, one school in every kirk; and from that time to this the Scotch people have been an intelligent people in every country, and from low estates have always risen to responsible positions. One-sixteenth of the public lands were donated by the State of Virginia for public schools. Here in Texas munificent landed donations have been made for the schools. The history of the Anglo-Saxon race everywhere is that they mean to provide for their children a system of public education. But here we are met with a great argument that we are too poor. But all the land and property are still here. The land is the basis of our great wealth, and the very fact that we are poor is one of the best arguments in favor of a public school system. If we are poor we cannot pay for private tuition, but we must educate the children of Texas. There are 1,700 of our Texas children being educated abroad. The amount of money expended upon them is almost sufficient alone to educate all the poor children of the State in public schools. There are private schools in Houston in which they charge for a single pupil $15 a month, and here in Austin I find they are paying $40 to $45 for a session of forty-five weeks. I see that we gentlemen are educating our children, but the people are not. Well, sir, we are expending money in that direction selfishly. We send our children abroad everywhere to school in the Northern or Eastern states, or in Europe; and what are they when they come back? Have they got the true spirit of Texas children in them? Do they not turn up their noses at Texas? They grow up with a foreign spirit which is an injury to our country, and when we lie down at last, in our stead the children who have come from other states, educated in free schools, will take the Government in their hands, to the exclusion of ours, educated in a foreign state or country.

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[67] His remarks are taken from the *Galveston News* of October 19, 1875.

"The fact is, Mr. President, we have a great many children not going to school whose parents cannot pay any amount of tuition; but the amount of tuition paid at private schools, the traveling expenses, costly board and other heavy expenses of children schooled abroad, would be sufficient to establish a system of public schools and to educate your children--and mine—to extend even the priceless boon of education to all the children. All parties have pledged themselves to common schools. In the last State convention of the Democratic party, by a two-thirds vote of 800 delegates, it became pledged to public education. The Republican party is likewise pledged. But, sir, I think it is outside the domain of politics. We cannot deny that all parties have pledged themselves. They cannot deny to the orphan and indigent children this free education. I want to ask, shall we go on under the proposition made, and build up out of the common school fund the private schools of the country? It will not be distributed in the districts where the poor reside; the money will go where least needed, and those most needing will get nothing. It is a great argument that we are poor. That is the very reason why we need in Texas to educate our children. We ought to husband our money within our own borders and build up a great system for all. I feel a pride in every bright-eyed Texas boy and girl. I want my children to be men and women of intelligence. A system of education will be the greatest argument with intelligent men of other states and countries why they should come to this State, and these kinds of men add to the aggregate of wealth, add to the aggregate of best educated labor talent. It will be the system best calculated to bring them here that can be devised. We want a system not subject to the control and the whims of its patrons.

"Where is the private school, however pretentious, that is satisfactory to its patrons? We should establish graded schools in which all grades of children may be appropriately classed and the more efficiently and cheaply taught. Now, I am willing to concede anything for the public schools. Last year there were 313,000 children within the scholastic ages, this year 339,000. The number is increasing more rapidly than any possible increase of the fund. If we don't want to pay out of this fund, which none of us want, then I want some other way provided. I want a poll tax. San Antonio, New Braunfels, and Brenham all have their public schools at an expense of about one dollar per month for each pupil. Gentlemen, where can you find the same economy in private schools? Are we as a state and a whole people to remain unprogressive? It is a question whether the cities of Texas will go ahead. All the other states go ahead and we remain standing still. The money, sir, does not go out from us in the support of public schools; it circles around among the people, from them to the State, then to the teachers, and back where it came from. It does not go beyond our borders, nor after spending it abroad do we have our children coming back to us with foreign proclivities. For a session of four months we have to raise $600,000, or for six months, $800,000. The argument that we cannot stand the tax is an argument in favor of it, for we all have to educate our children, and to do that at private schools costs more than to educate our own and all the orphans and indigent children in the State. If parents will not send their children to school, but in their tender years keep them in the field and draw by hard labor their very life blood out, the State ought to interfere and compel them to do justice. It is not the claim of the poor man or the drunken parent, but it is the cry of the children we should listen to. It is the demand of the child, not the parent. We have nothing to do with the parent, but everything with the child. While I am in favor of the administration of the law, civil and criminal, yet I hold it is the duty of the State also to fit all the children of the State for their proper position in the country. I am for contributing enough for the education of the poor children so that we may cheapen the administration of the laws. Sir, let us appeal in behalf of the children of Texas to the feeling of fatherhood in our breasts. Let us be charitable to those around us. Let us contribute our means if we have to stint ourselves for the benefit of the poor children who have to battle some day for the support of the Government. Let us at once—for one time—rise above a feeling of self and self-interest. Let us confer this boon upon them and educate not only our own children but all those around us and make them better than they are now."

GENERAL WHITFIELD said that he endorsed all that Mr. Cline had said, but he was thirty or forty years ahead of his time.

PRESIDENT PICKETT took the floor and read Section 7 of the majority report. He submitted that the effect of that section, if adopted, would be to take away from the Legislature the disposition of the school fund and the control of the public schools. Why? Because they had not provided in the report a system for carrying on the schools four months of the year.

Consequently, the Legislature could not take hold of the fund and make disposition of it, either now or in time to come, because it was evident that the growth of scholastic population would forever keep pace with the growth of the school fund. Would it not be better that some change should be made to take hold of the fund and to make some such provision for schools as the people may hereafter order? Was it right for them to say in their organic law that the people should not now nor hereafter control this fund? The amendment of Mr. DeMorse and the gentleman from Collin relieved the question somewhat and did not take it out of the hands of the Legislature. It seemed to him more feasible to place the fund in such a way so the voice of the people could reach it through the Legislature.

MR. SANSOM said he desired simply to say that the people wanted no taxes levied for the maintenance of public schools. He said he knew not one taxpayer in his entire county when he canvassed the county who expressed a wish to continue the public schools by taxation. He did not believe the people of Texas wanted to go one step in that direction. It was this school tax that the people had complained so much about. It was the main tax, the main expense and burden, that induced them to call this Convention. They could have borne the other taxes. They wanted the power of the State to tax for such purposes limited by this body. There was hardly a gentleman there but knew that his people complained more of this school tax than anything else. Then should they say to them that they would again put it in the power of the Legislature to impose that odious tax? By that they should say they dared not do what they wanted, but they would throw the responsibility upon the Legislature. The gentleman from Harris had spoken as though they were discussing the English system. Now the English system was that which they should provide, for when they said that the Legislature should pass a sufficient law, that became the English system. "Mark you," he said, "the Government of England gave some one a lease of the service of the child, and did not levy a tax, but simply gave the child under the control of another, under control of somebody to work for and serve for its maintenance and education." The gentleman from Harris had said, as they all had said, that where they did not have public schools they had ignorance and vice. He said the statistics did not show it. He made this statement that the gentleman would find in Massachusetts, where they spent over $2,000,000 annually, that crime was increasing as rapidly as it was anywhere in the country.

MR. ROBERTSON, of Bell, said that all the amendments which had been presented had been for the purpose of increasing taxation.

He said he had not come to Austin to increase, but to lighten the burdens of the people. They had complained of the enormous taxes and of two classes of taxes, the road and school tax. They had complained that they were enormous and unequal. He wanted to get rid of those taxes. He readily admitted the force of the argument of the great propriety of educating the masses of the children of the State. The objections urged to these taxes drew from the people the general cry for a convention that they might be relieved of those burdens. He said he wanted to call attention to the fact that the great increase in the population not yet contributing any means toward the support of the Government, and to ask was it right for the people of Texas to contribute to educate their children? He said he wanted to tell them it was all they could do to educate and take care of their own households. He wanted to build a wall so high no one could come into the State if they were going to have a regular educational government supported by the taxes of the people. Gentlemen came up there and claimed to have cut down the salaries of officers, saving annually a few thousand dollars, yet when it came to levying taxes to the amount of millions, they became all at once very liberal. Relief was not in cutting down salaries, but in extending even-handed justice to the people of Texas who had stood by Texas.

MR. MCCORMICK said he came to Texas a small boy, when the great war of secession was in progress. He said he was proud to say that he had crossed the Mississippi River under the Lone Star Flag of Texas, and was proud to say he was there when the war was ended, and was broken in body but not dispirited, and then again sought peaceful pursuits. He said he was not proud to know that the rich men were opposed to a small, pitiful tax to educate the children of the heroes who carried their flags during the war. He knew that his children were to grow up in ignorance unless the State of Texas should educate them. How many thousand were like him, looking to the State for that boon? They had also followed the banner of true democracy, had supported its principles through years of trial, and he, for one, would support its principles under the platform of 1873, that induced the people of Texas to put the incumbent State Government into power. He said he would read to the gentlemen who were opposed to public schools, who objected to a tax of one-quarter of 1 per cent to educate the children of the poor and the unfortunate of the worn, crippled, and maimed Confederate soldier; he wished to read to them the Democratic platform that brought into existence the incumbent Democratic Government and that very Convention.

He stood there as a Democrat, under the platform of the Democratic party of 1873. He said he saw in the list of delegates prominent men who were there in the constitutional convention. But what did they see and hear, now that the Democratic party had come into power? The prominent men told them that their constituents were grumbling at the taxes.

**Mr. Waelder** said he favored Mr. DeMorse's substitute. It did not meet all his views, but he preferred it to the majority report, and hoped that the friends of free schools would support it so as to get it before the Convention and perfect it. If they were forty years behind the age they had better get abreast of it as soon as possible. The majority report itself said that "a general diffusion of knowledge is essential to the preservation of the liberties of the people." He believed in the truth of that declaration, and if it were true, as the committee declared, it was essential that they should commence at once and not put it off for years and perhaps forever. He understood the gentleman from Wood to say that education led to monarchy.

**Mr. Russell**, of Wood, interrupted to say that he was referring to the Prussian system, the adoption of which system might lead to monarchy.

**Mr. Waelder** denied that any system of education could lead to monarchy or despotism of any kind. The gentleman of Wood talked very glibly in denunciation of that system, but he could thank God if Texas had the same educational system that Prussia had. It was admitted to be one of the best educational systems ever devised by the wisdom of man, and when men made their exits from their public school they were fitted to make good citizens of that or any other country.

**Mr. Murphy** said that he looked at the question from an independent standpoint. Gentlemen who opposed the poll tax as a condition precedent to voting as oppression to the poor man were now arguing in opposition to their former convictions. He read statistics to show that in nine years of crime in Massachusetts the number had increased from 26,184 to 88,637. He did not want them to throw money away upon any foreign system. He cited this to show that civilization did not lessen crime. Show him a good system of education and he would support it, but the present machinery was inadequate to the support of a good system.

COLONEL FORD said he was not willing to vote for any measure that would force a man to pay his way to the ballot box. He had always been opposed to disfranchisement in any form. It was proposed, not that they should adopt the Prussian or any other system, but should put machinery in operation that would lead to a public free school education. It was no argument to say that civilization was not a barrier to crime, because crime had increased in Massachusetts. It had increased perhaps in proportion to population or from the hordes of paupers and criminals thrown upon her shores. It was as much an argument to say that a man ought not to be compelled to pay taxes to punish crime in the children of the poor man as to say that a man ought not to be taxed to educate all children in which those of the poor man were included. He said he favored the DeMorse substitute.

MR. RUSSELL, of Wood, said that he did not believe that education led to monarchy. He was as great an advocate of education as anyone on that floor, only he favored individual instead of national education. He had said that the features of the Prussian system led to the baptism of the child by the state at seven days, to his education by the state at seven years, and a few years later they were taken from their homes and placed in the army of the king. He denied the right of the government to take possession of the children, and to become their proprietors and masters; he denied the right of the State to lay its unhallowed hands on the property of the citizen, except for the maintenance of the legitimate purposes of government, and denied that their view of the question was maintained by all of the political economists of eminence.

MR. LOCKETT said that the argument of those who quoted statistics did not carry any force against the school system. If they did they had better go back to savage life and each man hunt his particular buffalo for the wool that was on him. It was ridiculous that in this advanced age, they should go back on the experience and the light of the past in all people and all countries; that it was not right to educate and elevate the people. Take the natives of Massachusetts, and none would deny that they were not educated in morals, so the pauper and criminal class thrown upon it had occasioned the increase of crime. He was a Southern man so could not be accused of partiality. He testified to the usefulness of the Bonham public schools. The Chairman of the Executive Committee had openly pledged himself to vote against the ratification of the Constitution if they did not provide a system of public education. Some of the gentlemen's arguments would seem more fitted for an asylum than for a constitutional convention.

MR. DEMORSE compared his substitute with that of the majority report. The latter said that public schools would be provided hereafter, his proposed to begin at once with such resources as they had, and without burdening any portion of the country. He also pointed out the other features he deemed of an advantageous character in the substitute.

MR. NUGENT said that the people of the State were not opposed to the free school system. His views were well explained in the substitute of the gentleman from Red River. The trouble was that the Legislature had assumed too much power. The people wanted the schools under the proper restrictions. The prejudice against the system arose from burdensome taxation.

JUDGE REAGAN admitted the principle of local taxation, but drew attention to the position of the Convention a day or two back when the proposition was to require the payment of a poll tax as a prerequisite to voting, while it was now proposed to double it. He favored the amendment of Mr. Johnson.

MR. RUSSELL, of Wood, said he favored the majority report, with the exception of one-tenth of 1 per cent.

MR. WAELDER said he favored the amendment of Mr. Moore, because it was a question in his district and he was in favor of direct taxation for free schools. He believed that the Prussian system originated in Saxony, the birthplace of Protestantism and liberty. Prussia had only carried the system out to its full perfection. Some people condemned the school system because of its connection with radicalism. Some believed that radicalism and diabolism meant the same. The dying thief on the cross uttered something worthy of the Redeemer's attention.

He did not regard a tax for school purposes as direct taxation. It was taken from the general revenue. The $2 poll tax would go to educate the children and when a man thought of that he would not be apt to grumble much. He had heard the Constitution of 1845 advocated so much that he was surprised that members should be adverse to the one question of taxation.

MR. MOORE spoke in favor of common free schools. The gentleman from Wood (Mr. Russell) had talked eloquently and feelingly of the poverty of his people, and said they were not able to sustain public schools. Did not our fathers before us, in 1845, when the whole country was stricken with poverty, inaugurate public free schools? We must educate our children and not allow them to be straggling all about over the country. It was to their interests in every conceivable manner to build up schools throughout the whole State. Education was a great bulwark of their liberties, and should be encouraged by every legitimate means. His idea was to leave the whole matter subject to the people in the future, to be treated as they desired. He did not think the Constitution should have a word to say in the matter; but let the people control it. For one he was not afraid to trust them with their own affairs.

MR. MCLEAN said the country was too sparsely settled to maintain a system of public free schools. They had tried it, and made a miserable failure. They had been pointed to Massachusetts for an example. She was 200 years reaching her present facilities in the way of free schools; and they need not, especially in their financial condition, try to imitate her. The effort would bankrupt them. He wished they were so situated that free schools could be had, but saw no chance for the State to maintain them. He paid a glowing tribute to Prussia on account of her beneficent school system.

MR. DOHONEY said he was strongly in favor of public free schools, and thought if the Convention failed to provide some mode that the proposed Constitution would be defeated. He thought that the proposed amendment introduced by Mr. Johnson, of Collin, this morning was dodging the question by leaving the whole matter to the Legislature, but believing that was the best that could be done, he would vote for it on the ground that "a half loaf of bread is better than no bread."

MR. FLOURNOY said he was opposed to any system of public free schools supported by taxation. He contended that no free government could levy tribute on the citizens to force education on the children. Massachusetts and other states had been held up as having magnificent schools, sustained by their respective states. Were those people any happier, wiser, or more virtuous than those of Texas? Nay. He would venture the assertion that there lived no more virtuous, intelligent, and prosperous people than Texans. They were the peers of any people. They had no right to invade the mansion of the parent and take from him or her their bright-eyed child, and turn him over to the State. Whenever they should do that they could do anything. When that was done the science of free government was trodden under foot; the liberties of the country gone.

MR. WADE said he strongly advocated a system of public free schools. He claimed that ignorance was the mother of nearly all the crime in the country; and that, vice versa, education tended to make one all that was noble and pure.

On motion of Mr. Graves, further debate was cut off, and the Convention proceeded to a direct vote on the pending amendments. The amendments were all voted down by decided majorities.

MR. WAELDER then offered the following as a substitute for Section 3: "The Legislature shall provide for the levying and collection of an annual tax of not more than one-sixth of the per centum of taxable property, real and personal, of the State, and also a poll tax of $2 on each voter of the State; and the taxes so levied and collected, as well as the income from the fund herein provided, shall be annually distributed for the education of all children between the ages of 8 and 14 years among the several counties or school districts according to their respective scholastic populations."

## ' THIRTY-SECOND DAY

### TUESDAY, OCTOBER 12, 1875[68]

MR. DOHONEY offered the following amendment to the amendment: "Provided that the taxes raised under this provision shall be applied to the public schools in the county where they are collected."

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[68] The proceedings for this day were taken from the *State Gazette* (Austin), October 13, 1875.

MR. NUNN said that a reinauguration of the system of 1845 would perhaps not be acceptable. The hostility to the school system under the Constitution of 1869 was hostility to extravagance and to unnecessary offices, rather than to education itself. But the people did require a school system, and his people had instructed him to press the question. He believed in living up to the declaration of the Democratic platform. The utility of public education had been settled by a policy of twenty-five years. He read an estimate from the Superintendent of Public Instruction to show that the 150,000 scholastic population between 9 and 15 would cost about one million of dollars annually. This would be raised by adding to the present school fund of $125,000, a poll tax of $3, which would be reasonable enough when made a provision precedent to voting, and a tax of one-eighth of 1 per cent on taxable property.

MR. ROBERTSON, of Bell, said he could not consent to such a proposition as one-eighth of 1 per cent. He was not opposed to free schools when they were in a condition to establish a good system. The tax of one-eighth of 1 per cent on taxable property, not one-tenth of the annual revenue, would materially increase the present taxation and he and his constituency were opposed to it.

MR. DEMORSE offered a substitute to the substitute, providing that free schools might be established in populous districts by a vote of the majority of the freeholders taxing themselves in a sum not to exceed one-fourth of 1 per cent.

MR. MCLEAN spoke at length in favor of the substitute.[69]

He said: "Mr. President, the debate has been so discursive that I have almost lost sight of the question. I shall not undertake to speak of the general importance of education. It seems to me, sir, that it reflects upon the general intelligence of gentlemen, in fact, to my mind, it is an insult to the intelligence of this body that such arguments as I have listened to should be submitted. It is gravely argued by some that education enhances and refines the moral and intellectual natures of men, and others contend that this is accomplished only by the miraculous intervention of Deity! Life is too short to discuss questions of this sort in this late day of the nineteenth century. It is likewise too late to stop to discuss the question as to whether a sound system of free schools is beneficial to the people. The question before us is, can we put into practical operation in the State of Texas a system of public instruction that shall accommodate all of our population, adapted to our situation, and such as we can avail ourselves of; are we ready for it, and are our people ready for it, are our resources adequate to the accomplishment of the purpose? I contend that no system of public education ever was or can be maintained or sustained, except by taxation. We may felicitate ourselves on a magnificent fund in the future, to be derived from the sales of public lands set aside for public school purposes; but when we look into this question and study it closely and estimate the future by looking at the present and the past, in my opinion we must conclude that if a million dollars shall be realized in a period of twenty-five years to come, it is all that the most sanguine can expect from the sales of school lands, and this is a very insignificant school fund. Our population is too sparse to admit of the establishment of a general system of public education. We have had some public schools and have made some spasmodic efforts at a public school system since the war, but they have been total and disastrous failures and all because our population is too sparse to allow the practical application of a system that shall be equal in its burthens and its benefits.

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[69] His speech was published in the *State Gazette* (Austin), October 15, 1875.

"But Massachusetts is referred to. There can be no analogy established between Texas and Massachusetts that would be of service to us in pursuing the inquiries suggested by this subject, no parallel between their respective conditions can be drawn at all calculated to enlighten us in this discussion. Massachusetts is densely populated; it is an old, a rich, and a prosperous state; she can collect within the walls of one building 400 pupils with the same ease and expense that we should incur in gathering forty pupils, because here they are not within reach of any one given point, except in a few exceptional localities. Until the time shall come when our population is sufficient in numbers and compactness, for the establishment of a general system, the attempt to disseminate public instruction generally and thoroughly will bankrupt the Treasury and the people of the State. We cannot expect to go at one short step into the position that Massachusetts occupies in this relation, when she has taken 200 years to reach this present state of perfection in the matter of public schools which is her chief pride. Her population is compact, her people are all neighbors, her system has been matured, and they are the best public schools in the United States. They are the cheapest schools and the best institutions of learning in the states.

"The amendment of my colleague (Colonel DeMorse) proposes to provide in the populous districts of Texas, where public schools may be desired and can be maintained, that the people shall have the privilege of taxing themselves to support these schools, the property-holders being the judges of the necessity and the amount of taxation, which is not to exceed one-fourth of 1 per cent. By the terms of this substitute the people of these districts are permitted to establish public schools—if they think it feasible—in the populous districts, at the expense of the immediate beneficiaries of the schools. That proposition does not tax men on the frontier to pay for the education of children elsewhere, but brings the tax immediately home and takes it from the pockets of those who are immediately benefited by its expenditure. This cannot be objected to. It does not impose the tax on any portion of the State but that which is directly benefited, and then only by a vote of the *bona fide* taxpayers. It does not attempt to do what we cannot do, establish a general system of public instruction in the State of Texas, under the auspices and sole control of the State Government. Besides, the poll tax in the substitute of $2 and the tax not to exceed one-fourth of 1 per cent, will be willingly and cheerfully paid by the land owners of these districts for the privileges of these schools. I assert that a good system of public education is superior to any other. It is not subject to the whims and caprices of individuals; sects and cliques cannot control it. It will be controlled by designated authority, satisfactory to the freeholders of the district and the patrons of the schools, and the conduct of those who manage the schools will be criticized with the same jealousy and watchfulness that characterizes the most jealous patrons of private schools and private school teachers, with all of the good and none of the bad results.

"Allusion has been made to the school system of Germany, and when the gentleman from Bexar uttered an invocation that Texas might have here as good a system, from the depths of my heart I responded amen! But it is impracticable. I am sick of hearing gentlemen cry out monarchy, when allusion is made to a system of public schools that may exist in autocratic governments. We are not talking about forms of government, but systems of education that are suited to Texas. The German system, a system that has been improved upon and embellished until it is the chief pride of the German empire, cannot be applied to Texas for reason already given. There no boy or girl can grow up in ignorance. They have the population, the system and the means to carry on a thorough system, and they have availed themselves of these. There, sir, the boon of an education is not merely dreamed of by the poor boy, but it is at hand, and is as free as the air he breathes. This is what I would like to see in Texas, but it is impossible. It is impracticable to establish a public system of schools with the means at our command, for as I have said, we cannot collect together a sufficient scholastic population to warrant the establishment of schools for more than one-third of their number. Hence I support the substitute of my colleague, because it does give the people of the State an opportunity of establishing a system of public schools at their own expense where it is practical, that shall not be a burden on other portions of the State impracticable. There is not a county in the State in which there are not communities where the scholastic population is insufficient to establish private or public schools of respectable size, and yet gentlemen propose to adopt a general system of education for the whole State of Texas, where the benefits must fall upon the few, and the burdens upon the whole State alike. The people have tried it and cannot stand it. We have spent millions of dollars in one or two years trying to establish a general system of education, and the schools were so few in number, so partial in their benefits, that no adequate return was made for the outlay. We have seen a public education tax of 1 per cent levied, collected and consumed in this way and not one-fourth of the children at the schools, and hence I say that the fund will do no more than provide for the indigents and orphans of the State. But the substitute of my colleague will give to the populous districts an opportunity to establishing free schools at their own expense, for they are without doubt, the best and cheapest schools in the world when placed on a proper basis.

"This much I have said, Mr. President, to define my position upon this important, and I must confess, embarrassing question. The people of this State are not able to support a complete and general system of education, but the fund already provided is sufficient to provide for the unfortunate indigents, and these must be taken care of; charity demands it, society is interested in the mental and moral culture of these children, and the State has a direct interest in seeing to it that these future citizens shall be prepared for usefulness."

Mr. DeMorse's substitute to Mr. Dohoney's substitute was lost by a vote of 33 to 42.

Mr. Dohoney's amendment was lost, the vote being 28 to 48.

MR. FLEMING said that he supported Mr. Waelder's amendment, which provided for the levying and collection of one-sixth of 1 per cent on all taxable property, real and personal, and a poll tax of $1, and the fund therein provided; to be distributed among the counties and school districts for the education of the scholastic population between the ages of 8 and 14.

MR. BARNETT said he was opposed to going any further in the matter than giving one-tenth of 1 per cent for the education of the indigent. This, he thought, was the sentiment of the Convention.

MR. FLOURNOY spoke as one of the young Democrats who was in favor of free schools. He had voted for every amendment looking to their establishment on that floor. If they wanted the assistance of the young members of the Democratic party and the new Constitution not to be voted down they must give them a system of free schools. He said the people of his county were not opposed to free schools, but only to the manner in which they were maintained, to the dangerous and unrestricted delegation of power to irresponsible boards of school directors. All they asked was that the question should be left to the Legislature under reasonable restrictions. He characterized the nineteen delegates who opposed free schools, and who had been lauded so highly, as a band of old fogies. He regarded the majority report of the committee—without intending to be personal in either case—as a fraud on the people. If they would not give them free schools the committee had no right to waste the fund. He would have preferred the minority report of Mr. Cline, if he had stricken out the office of Superintendent of Public Instruction. Under the old system it took $68,000 out of $100,000 to pay the school officials. Under the DeGress system, the school officials received nearly as much as the teachers received. This was what his people opposed, not free schools; they wanted them and would not rest satisfied until they had them.

MR. NUGENT said he had confidence in the people. He would scorn to stand in the sunshine of the nineteenth century and assert that the people should not be trusted to the extent of taxing themselves to the amount of one-fourth of 1 per cent. He never had such a degraded view of his constituency, much less of the people of the entire State. He had never been opposed to a system of public education on the fund raised from the school lands. He didn't believe that a system could be funded on the funds as they then stood, and considered the majority report a sham, and a subterfuge. It would never accomplish it. He would not vote for the amendment because it was a special tax.

MR. MARTIN, of Navarro, introduced a substitute for the whole article on education. The principle feature was in leaving the Legislature free to make provision for public schools by taxation, giving the use of the school fund to free schools, and making such a system when the proper time arrived. He said it might not be today or tomorrow, but he wanted the Legislature left with power to act as it saw fit after the burdens of taxation were lightened.

Mr. Bruce said he had been elected on a platform which would not recognize the levying of a cent tax for anything other than the support of the Government.

Mr. Nunn moved to recommit the whole question and all the pending amendments to a select committee of seven.

Mr. Sansom said he feared that such a committee would fail to harmonize the different opinions of members, and thus the whole debate would have to be repeated.

Colonel Crawford said he thought the minority report was much kinder to the children of the State than was the majority report. He referred the Convention to the various Constitutions of the State, to all the laws ever made on the subject of schools, to show that even when steeped in poverty the statesmen of Texas had always made ample provision for the education of the children of the State. From the days when the noble Texans had declared their independence education had been one of their chief objects. Even in 1866, when the people were broken in fortune, both public and private, their firesides cheerless, their farms laid waste, and all lost save honor, even then the Convention of 1866 had made ample provision for the education of the bright-eyed children of their loved State. The Democratic platform of 1866 had reaffirmed the doctrine. He was compelled to look upon the majority report as a sugar-coated, stupendous fraud. If he were compelled to choose between the two he would take the minority report submitted by Messrs. Sansom, Holt, Dunham, and Cooke, of San Saba. It was kinder by far to the orphans of the land. If delegates did not believe that the State had the right to tax for the support of free schools they ought to say so bodly, like Mr. Sansom had done, and they ought not to try to hoodwink the Convention and the country with such an abortion as the majority report.

Mr. Ferris supported the motion to refer to a new committee. He had come to Austin as a friend of the free schools, and was ready to support the system as defined in the Constitution of 1845. He thought there was not a county in the State which would go back on such a system. It would be indeed strange if, at that late day, they should change a system which had worked so well. If the majority report prevailed it would be the death blow to free schools, and he wished to ask those who claimed it was a compromise to show where the compromise came in. It took away the trust fund for free schools and handed it to private schools, and hence would destroy public schools as a necessary consequence of the misappropriation of the funds. If they committed that crime against the people, it would defeat the Constitution, and it ought to do so. He was not in favor of public schools, for the people could not bear the necessary taxation. The Constitution of 1845 had left the Legislature to establish free schools throughout the State as soon as practicable, and as soon as sufficient means could be raised for the purpose. Could they not do as much?

MR. DARNELL said that he, too, favored a recommitment, and hoped the committee could report a compromise upon which all could agree.

JUDGE BALLINGER said that from his earliest manhood he had never doubted that it was among the clearest powers and the most imperative duties of the State to give the benefits of free common school education to all the children of the State. This had not only been accepted, but had been treasured, in all the other American states. In Texas, from the day on which her independence from Mexico was proclaimed, one of the causes set forth being the want of public education, which was essential to liberty and the capacity for free government; in every organic act that duty had been clearly declared. Both parties in Texas had adopted it in their political platforms. He had come to the Convention with no sense of duty stronger upon him than to preserve unimpaired the principles referred to, and to do all things practicable to carry them through. Yet he now heard upon the floor that right of government wholly denied. Such was the anxiety of gentlemen for their individual liberty that they denied that principle which was so essential to public liberty. Such was the solicitude of gentlemen for the religious instruction of their own children that that had been made the protest for denying the blessings of education to the poor. He would not discuss the subject.

But the report of the majority, many of whom professed to be the friends of free schools, involved the abandonment of the system power. They called it a compromise, but it was a complete surrender. Free schools were to be established only when the means provided would do it throughout the whole State for a period of four months every year. But not one cent of taxation was made imperative, and taxation was limited to one-tenth of the State revenue. It was notorious. Both sides, or rather he would say all sides, admitted that that amount would never establish a system of free schools. One-tenth was the minimum, and it was imperative in 1845. It was now proposed as the maximum, and might be entirely ignored, according to the majority report. Why should the people of Texas be so restricted? In the North and Northwest, wherever American people went, they first laid the foundations of a free school system and then built upon it. Was Texas alone unable to do that? If they were too poor just then to levy taxes, they should not do it. But was it their destiny to be forever too poor to establish free schools? With the funds already in hand, with the munificent domain their fathers had transmitted for the purpose, was it true that Texas, with her boundless territory, her genial sun, her immense capacity for production, with population teeming into her soil, forever and forever would be unable to establish free schools? He said he did not believe it to be true, and would never consent to such action. He had referred several days before to the conditions of the readmission of Texas to representation in Congress, that the provision for free schools in the Constitution of 1869 should never be impaired. He knew there was no judicious judge to enforce this. He hoped there would never be any political power to enforce it. But they were answerable for it to public opinion, which, North and South, Democratic as well as Republican, favored free schools; and he believed that to pass the majority report they would do much to prevent the development of the State and to retard its growth, as well as to produce the belief that the policy of the Democratic party in Texas was reactionary and directed toward ignorance. If the friends of free schools could not preserve those principles which would result in the establishment of a free school system throughout the State, they should be made to understand the fact, and then he would make no farce of the system. He would then, on the contrary, support the views of the delegate from Williamson, and those who acted with him, and confine the bounty of the State to the orphan and indigent children of the State.

MR. COOKE, of Gonzales, said he would go as far as the fathers before them—one-tenth of the annual tax—but no farther. They had various financial difficulties, and were not in a condition to attempt too much.

The motion of Mr. Nunn, to refer to the subject matter of free schools to a committee of seven, prevailed.

## THIRTY-THIRD DAY

### WEDNESDAY, OCTOBER 13, 1875[70]

### *Bill of Rights*

MR. DEMORSE moved to amend Section 10 by inserting after the word "favor," "and shall have the right to make a declaration of his acts and the motives therefor, the truth and weight of which may be considered by the jury in connection with other evidence." He said it was now the system used in the State of New York. There had been cases when men had lost their lives from circumstantial evidence, when had they been allowed to explain the circumstances their lives would have been saved.

MR. WEAVER said he was against it as an innovation. He said that in civil cases it led to more hung juries than anything else.

MR. DEMORSE said there was no parallel between civil and criminal cases. His proposition merely allowed the jury to take the man's explanation at its own worth, and which, taken into consideration with outside circumstances, might be the means of saving his life.

MR. RUSSELL, of Harrison, said if it was of importance that such a principle should be adopted in civil cases, how much more was it so where a man's life was endangered. In civil cases it had the weight of evidence, in a criminal case it would be a statement only.

MR. DAVIS, of Brazos, regarded the amendment as a dangerous innovation. As the law stood, a man could not be convicted where there was a reasonable doubt, and in cases of circumstantial evidence, there must be such a train of circumstances as could lead to absolute certainty before conviction could take place. A plausible defendant could always get up a plea that would raise a doubt of guilt in the minds of the jury. It was an unnecessary departure from the old landmarks.

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[70] The proceedings for this day were taken from the *State Gazette* (Austin), October 14, 1875.

MR. DEMORSE said there had been cases within the last few years where innocent men had been convicted and executed on circumstantial evidence, when their innocence had been avowed by the guilty parties on their deathbed.

MR. MOORE said he thought the amendment would work unjustly to the prisoner, as an unjust inference might be drawn by the jury where he refused to speak.

COLONEL CRAWFORD regarded the amendment as an unwarrantable innovation and injurious to the prisoner. It would fill the court houses with perjurers. It ought not to be introduced into the Constitution, as it was within the power of the Legislature now.

MR. WRIGHT said that if any one had, six years ago, proposed to allow a man to testify in his own behalf in civil cases, the matter would have been received with holy horror, and now two-thirds of the profession could not be prevailed upon to repeal it. It was said that this amendment would lead to false swearing. For the same reason the father or the brother of dependents could be prohibited from testifying. Whilst he would not be willing to go as far as Mr. DeMorse, he thought it would be well to allow the Legislature to permit parties to testify in cases where the prosecutor alone fixed the guilt upon the defendant, lest the latter be the victim of his malice. This would also be very serviceable in bringing the declaration of a party home to himself. For instance—when parties declare certain things to one man, which distorted by malice would convict a prisoner, but which if explained would reveal the malice.

MR. DAVIS, of Brazos, said the Legislature had such power now.

MR. WRIGHT said he would make it the duty of the Legislature to provide such a law.

MR. WEAVER said he was mistaken and thought Mr. DeMorse's amendment applied only to civil cases, but he endorsed all that was said against the amendment as applied to criminal cases. Place a man's veracity by the side of his life and it would in most cases weigh down the scales.

MR. RUSSELL, of Wood, said he thought Mr. Crawford had changed his tactics since yesterday, when he made an eloquent appeal relieving parties charged with slander.

COLONEL CRAWFORD said he denied this. He had merely defended such when the libel was true and published with good motives.

MR. STOCKDALE proposed as a substitute for the amendment: "In civil cases no party thereto, if he have an interest, shall testify, unless called to testify by the other party, and in criminal cases no defendant shall testify."

MR. STOCKDALE said that the amendment of Mr. DeMorse was an innovation on the old common law rules of evidence. When the law allowing the defendant to testify in civil cases was proposed, he was a member of the Senate Judiciary Committee and protested against it, giving the same reasons as those advanced by Colonel Crawford, that to call on witnesses who were parties to the litigation, was an endorsement of perjury. His own experience and observation corresponded precisely with this. It was extremely difficult and almost impossible to get at the truth by cross-examination, where the parties giving evidence were interested. With reference to criminal cases if the amendment prevailed and a prisoner declined to avail himself of the privilege to testify, then the inference would be against him. Gentlemen said that inference could not be drawn by juries. On the contrary, he said that inference was the law of circumstantial evidence. The district attorney, if a prisoner declined to speak, would simply have to say, "if he is innocent why does he not speak?" And the jury would draw the inference immediately. The corrupt or guilty man would always declare his innocence and would create and fabricate such facts as would establish his innocence, nay, in the interim, between arrest and trial, he could with the assistance of counsel, supposing counsel would lend himself to such a thing, prepare a statement of facts in such a manner that would defy contradiction and acquit him entirely. He (Mr. Stockdale) in the thirty years he had practiced law in Texas, had never seen an innocent man convicted, and those who would be benefited under the DeMorse amendment would be guilty, but to the innocent it would be a sword to injure them. He might be an old fogy but had been taught to believe that the common law was the perfection of wisdom and he was opposed to change unless endorsed and recommended by judicial sanction. In fact, he had rather go back and not allow parties on defense in civil cases to testify, except as to the evidence of the opposite party, and to prohibit their testimony altogether in criminal cases.

JUDGE BALLINGER said that the law did work well as applied to civil cases for the ascertainment of truth, as far as he was able to judge. With regard to criminal cases, it had been tried in Connecticut, but failed, and he thought the law had been abolished. He did not think such changes should be made which experience had to work out to a satisfactory result. To establish a constitutional provision of this sort would be very wrong, and he moved to table the amendment.

MR. STOCKDALE moved to add after "other court of record," "or district judge," making the writ of habeas corpus returnable to district judges as the others.

MR. STAYTON opposed the amendment.

MR. GERMAN moved to strike out "court of record" and insert "or district court."

This was accepted by Mr. Stockdale.

MR. STOCKDALE said exigencies might arise when it would be necessary to suspend the writ of habeas corpus. It would be suspended by arbitrary power as they had seen it in too many instances during the last fifteen years. He spoke, too, of the case of General Jackson arresting a judge in New Orleans, who, having fined him for contempt, was ordered to return the fine. Mr. Stockdale's idea was that if they wanted to give protection to personal liberty, they should go as far as was necessary in giving power to the Government to defend itself. He had prepared an amendment to cover this subject, but which he could not reach at that time, which he would present hereafter for the consideration of the Convention.

MR. REYNOLDS (colored) moved the following as a new section to come after Section 16: "No form of slavery shall ever exist in this State and involuntary servitude of any character whatever is hereby forbidden except as a punishment for crime when the party shall have been duly convicted."

It was explained that this was utterly unnecessary and it was tabled on the motion of Mr. Nugent by a vote of 35 to 32.

MR. NUGENT moved to insert the word "or" after "destroy" and "for" after "applied" so as to make Section 17 read as follows: "No person's property shall be taken, damaged or destroyed or applied for public use without adequate compensation being made."

**Judge Ballinger** said that there was a provision in the Constitution of 1845 that required that compensation should first be made. Writers and courts held to this opinion also.

**Mr. Stockdale** moved to strike out all of Section 17 down to the word "money," and insert, "provided property shall not be taken except for public use, nor shall it be so taken without just compensation being made to the owner, if taken for public use to be applied by any corporation, except the State, the compensation shall first be made therefor."

**Mr. Flournoy** said a case never would arise when the State would take personal property for her own uses, but counties and incorporated cities would be cut off from making roads or taking any property for public use without payment in advance.

**Mr. Stockdale** inserted the word "county," but declined to insert "incorporated cities." He objected to the latter, that whole blocks might be taken to open streets, and the homes of people pulled down over their heads, without previous compensation, as was done in New York City.

**Mr. Robertson**, of Bell, said he objected to the word "county" for the same reason that Mr. Stockdale urged against "city." The roads should have been laid out before they were settled, and it was unjust to cut through a man's plantation and occasion him the expense of erecting long strings of fences, without first having compensated him for the damage. This was already a question in his county. He moved to strike out the word "county." His motion was adopted.

## THIRTY-FOURTH DAY

### THURSDAY, OCTOBER 14, 1875[71]

**Mr. Nugent** moved to reconsider an amendment to Section 11 of the Bill of Rights, passed the preceding day, with reference to granting bail on the writ of habeas corpus in capital offenses after indictment was found. It was reconsidered and voted down.

**Judge Ballinger** moved to amend by inserting the words "in such manner as prescribed by law," which was adopted.

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[71] The proceedings for this day were taken from the *State Gazette* (Austin), October 15, 1875.

MR. WAELDER moved to strike out of Section 29 "and no appropriation of money shall be made to aid immigration to the State." He said that the part proposed to be stricken out in the first place did not properly belong to the Bill of Rights and ought not to be there, or as he had contended, in any part of the Constitution. How would this inhibition be regarded by the people living in other parts of the Union and in other countries? It would be regarded as a policy of exclusion. Immigration should be encouraged rather than prohibited. The opposition was not founded on reason or the good judgment of those who opposed it, but was rather an expression against the mode of administering the bureau in 1870 and prior to 1874. Whether the bureau was administered wisely or well was not the question, but the inhibition in it would be regarded as if Texas had shut her doors on the stranger. He did not defend the bureau as it had been administered up to 1874, but Texas did desire immigration and in his judgment it ought to be encouraged. He was opposed to restricting the Legislature in this respect.

MR. MCKINNEY, of Walker, said he was opposed to the restriction. It was against all of their traditions, because the State had been formed by immigrants and had grown up in that way.

MR. ROBERTSON, of Bell, said he was opposed to the amendment because it was in opposition to the policy of the State. This provision aiding immigrants by grants of money had prevailed only within the last few years. By and by he would be willing to aid all in his power in bringing immigrants to the State by increasing the donations of land to actual settlers, but he was opposed to permitting the Legislature to appropriate money without stint to such a purpose, contrary to the original policy of the State and adding to the burdens of the people.

MR. ERHARD moved to amend by inserting: "But immigration shall be encouraged by the Legislature by all means within its power."

MR. RUSSELL, of Harrison, moved as a substitute to strike out the whole section.

Mr. Waelder's amendment was lost by a vote of 23 to 49.

MR. WAELDER moved to strike out the following: "Immigration from the states shall not be prohibited, and no money shall be paid to immigrants for coming to this State."

MR. CHAMBERS said he did not understand that money was paid to immigrants, but only thought that money was used to aid them in coming to the State.

MR. SCOTT offered the following substitute: "But we cordially invite all who desire to better their conditions to make their homes among us."

The amendment and substitute were tabled.

MR. RUSSELL, of Harrison, offered the following as an additional section, to follow Section 29: "Importation of persons under the name of 'coolies,' or any other name or designation, or the adoption of any other system of peonage, whereby the helpless and unfortunate may be reduced to practical bondage, shall never be authorized or tolerated by this State, and neither slavery nor involuntary servitude, except as a punishment for crime, whereof the party shall have been duly convicted, shall ever be adopted in this State."

MR. WEAVER said that it seemed to him that not only the ghost of the Twelfth Legislature but all future legislatures were constantly rising before them. He opposed the amendment because it was a question that had been settled by the great Civil War. The United States Government was supreme in the land, and while he would not agitate the importation of coolies or the establishment of peonage, the phraseology of the amendment would strike at the humanity of the people of Texas, and yet only to get at the facts that slavery has been abolished. The Convention might pass a dozen ordinances establishing slavery, and it would amount to no more than if he had promulgated the ordinance. If they were to charge their Constitution with legislation, it would be as large as Paschal's *Digest.*

MR. BROWN moved the following as a substitute: "No form of compulsory servitude, except as a punishment for crime, shall ever be allowed in this State."

The House refused to table the amendment and the substitute.

The Chair held that the last half of Mr. Russell's amendment was out of order, as the subject matter contained therein had been passed on the preceding day.

JUDGE BALLINGER moved to add to Mr. Brown's substitute: "Except that of children to parents and lawful apprentices."

JUDGE REAGAN said the whole matter was settled by the Fifteenth Amendment, and any further action was unnecessary.

**MR. McCORMICK** said the question of slavery had been settled, and he hoped there was no man sunk to a condition so low and degraded in the State that he would reduce any helpless individual to a condition of servitude.

**MR. KILGORE** said he saw no necessity for action in the matter.

**MR. RUSSELL**, of Harrison, said that since he was compelled to speak he referred in the first part of his amendment to the law of 1866, the labor law. He called the previous question, and was sustained.

**MR. REYNOLDS** (colored) said he could vote for Judge Ballinger's amendment if the word "legitimate" was placed before the word "children," otherwise not. (Laughter.)

Judge Ballinger's amendment was adopted by a vote of 50 to 27.

Mr. Brown's substitute as amended, was adopted by a vote of 40 to 22.

**MR. STOCKDALE** moved to strike Judge Ballinger's amendment from the section just substituted, and insert "infants."

**MR. FLOURNOY** moved to amend Section 29 by adding, "but liberal preëmption laws shall be passed to encourage and protect actual settlers on the public domain."

**COLONEL CRAWFORD**, Chairman of the Committee on the Bill of Rights, moved to strike out all of Section 29.

**MR. DOHONEY** said that the provision sought to be incorporated by Mr. Flournoy was already provided for in the article on public lands.

**MR. McCORMICK** said the idea sought to be conveyed by that section was that we intended to catch immigrants when they came to Texas and keep them here. The idea that anyone would want to leave was strange enough, but it was preposterous to put a section in the Bill of Rights saying that "immigration from the State should be prohibited." He thought the whole section was misplaced in the Bill of Rights.

**MR. RUSSELL**, of Wood, insisted on the whole section being retained. He believed the preëmption system was far superior in encouraging immigrants to the immigration bureau, and that it was the proper place for the section.

**MR. McCORMICK** said he thanked God that he had learned the science of government from other sources than from the gentleman from Wood, who was opposed to educating children, opposed to immigration, opposed to every kind of taxation but what he called the *legitimate* purposes of Government. When the subject of immigration came up in its proper form he would be glad to debate it.

MR. NUNN supported the motion to strike out Section 29.

MR. KING said he favored the motion to strike out.

MR. GRAVES said he was tired of the debate, moved the previous question, and was sustained.

The section was stricken out, and the article on Bill of Rights was then engrossed.

### *Public Lands and the Land Office*

This article was taken up in the afternoon session.

MR. STAYTON moved to amend Section 2 as follows: "And any genuine land certificates, which under former laws have been declared invalid, because located on title land, or on lands held by older locations, are hereby revived and may be located on any of the vacant lands of the State."

MR. STAYTON explained the object of his amendment, which was to enable persons who had located lands in conflict with other titles, to lift them and locate them on a new part of the public domain.

MR. FLEMING moved to strike out Section 2.

MR. WEST said he was opposed to the last motion. He explained that the object of the committee was to place the headright and bounty warrants of the veterans on the same footing as the certificates of railroads and dry ditch companies. The former were barred by the Constitution of 1869 unless located by the first of January, 1875. The object of the committee was to place these certificates of the old veterans on an equal footing with others. With regard to Mr. Stayton's amendment, he was not aware there was such a class unprovided for, but if such, they ought to be provided for equally with other meritorious claims.

MR. DARNELL, chairman of the committee, was anxious to do equal justice to all classes of genuine certificates.

MR. FLEMING said he did not wish to deprive any old San Jacinto veteran of the opportunity of locating his land, but he had had thirty or forty years to locate it in. He thought the extension of time would only benefit land sharks and speculators. It could not be ascertained now whether many of them were genuine or not.

MR. WEST said they must be genuine or they could not be located.

MR. DARNELL said he could not see why the railroad or dry ditch company should have preference over the old veterans.

MR. RUSSELL, of Harrison, said that to repudiate the claims of the veterans would be flat repudiation. He spoke of two cases of orphans, whose father's certificate had descended to them, but in consequence of the death of their lawyer had not been located and were barred.

MR. STOCKDALE reminded Mr. Fleming of his promise, if he could find any one genuine claim of a veteran unsatisfied that he would withdraw his opposition. He reminded them of the case of General Somerville, a San Jacinto veteran, and two others, who had sold their certificates to another veteran, because they were in need of money, and the latter had bought the certificates to help them out. The fact was that where the certificates had gotten into the hands of speculators and had already been located. They lost no time about such matters.

MR. ROBERTSON, of Bell, a member of the committee, said he opposed Mr. Fleming's amendment. He thought great injustice had been done to a meritorious class of citizens. They were the claims of men who had won the liberties as well as the territory of this country, but had been cut off by the Constitution of 1869. He reminded them of the case of the heirs of Thomas A. Graves, a man who scaled the breastworks of Santa Anna at San Jacinto, who had appealed to him, Mr. Robertson, for help in the matter. General Burleson, a member of the Convention, had not located his headright certificate until within two years ago—another proof that they were in the hands of the original holders in many cases.

MR. MCLEAN moved an amendment extending the time to original grantees or their heirs.

MR. BROWN reminded them of cases he had experienced as a land agent at Dallas, which convinced him that all the land certificates of this class in the hands of land sharks, as they were called, had been located. They were too smart to leave them unsatisfied. He could say on his honor as a man that the proportion of certificates in the hands of speculators was very small. They were in the hands of widows, minors, and heirs.

JUDGE BALLINGER said he would not vote on this question because he was personally interested. He had married the daughter of a San Jacinto veteran. After the death of her father his headright was discovered and he (Judge Ballinger) paid $70 in gold to have it located, as he desired, in conjunction with other owners, to preserve it as a memorial, but owing to an accident it failed to reach the Land Office by the first of January, 1875, and was barred.

On motion of Mr. Dillard, the amendments of Mr. Fleming and of Mr. McLean were tabled by a vote of 66 to 10.

MR. ALLISON moved to amend as follows: "All unsatisfied genuine soldier's or donation headright certificates, barred by Section 4, Article X, of the Constitution of 1869, by reason of the owners failing to have them surveyed and patented, may be located on any of the vacant lands of the State."

MR. KILGORE moved to table the last amendment, and it was tabled by a vote of 40 to 36.

Mr. Stayton's amendment was adopted.

MR. DARNELL pleaded that the Convention should place all certificates on an equal basis.

COLONEL CRAWFORD proposed a substitute for Section 2 to have all land certificates surveyed, patented and returned to the General Land Office within five years after the adoption of the new Constitution or be forever barred.

Mr. Allison's amendment was lost.

COLONEL CRAWFORD explained that the Land Office was maintained only at great expense, and while he did not desire to do any injustice to any veteran or any one else, a sound State policy required that a limit should be fixed when the certificates might all be located, and our expensive land system come to an end.

MR. STOCKDALE also thought it a sound State policy that some limit should be fixed with respect to our land system.

MR. GAITHER moved to amend Section 2 as follows, "provided that none of the land certificates hereby revived shall ever be located, surveyed or patented on lands held under previous title or color of title from the sovereignty." This was adopted.

JUDGE REAGAN moved to reconsider. It was carried. He explained that the amendment, if passed, would tend to place a certain class of certificate holders in the very same condition from which Mr. Stayton's amendment sought to relieve them, for parties located on lands that were covered by older titles, or color of title, his certificate would be forfeited. He thought Mr. Gaither's amendment was dangerous.

JUDGE BALLINGER thought they ought to say to the holders of revived certificates and all other certificates, "go to the unoccupied lands and don't attempt to locate on land which may have older title or even the color of title." If a man attempted to seek a flaw in another's title for the purpose of locating his certificate he ought to forfeit it.

MR. WRIGHT supported Judge Ballinger's views.

MR. WEST said he opposed the amendment, because it failed to give repose to actual settlers. It was useless for a man to locate on titled lands for the law would protect the title, if good, while it would be equally difficult where there was colorable title, because the holder had the chain of title behind him and the best prospect of retaining his land. But it might happen that a man might discover a flaw in title to his own land, and desire to cover it with his certificate, but would be prohibited from so doing by this amendment.

MR. WRIGHT said he had misunderstood the purport of the amendment originally.

MR. GAITHER said that after the extension of certificates on a former occasion, his section was covered with a cloud of surveyors, with land certificates, who sought to dispossess a large class of settlers whose claims had been tested and proved. It was a great annoyance and occasioned considerable trouble.

MR. NUNN opposed the amendment..

MR. STOCKDALE moved the following as a substitute: "No location or survey, by virtue of any general land certificate, shall hereafter be made on any land that seems to be located, deeded, or patented by the records of the county or General Land Office."

This substitute was adopted.

## THIRTY-FIFTH DAY

### FRIDAY, OCTOBER 15, 1875[72]

### *Public Lands and the Land Office*

Colonel Crawford's substitute was the question pending. It read as follows: "All unsatisfied genuine land certificates barred by Section 4, Article X, of the Constitution of 1869, are hereby revived; all unsatisfied genuine land certificates now in existence, shall be surveyed and returned to the General Land Office within five years after the adoption of this Constitution, or be forever barred, and all genuine land certificates hereafter issued by the State shall be surveyed and returned to the General Land Office within five years after issuance or be forever barred."

MR. STOCKDALE moved to strike out the first three lines of the substitute and add the balance to the section as it then stood, or it would in effect cut off Mr. Stayton's amendment which had been adopted.

JUDGE REAGAN said he had thought a good deal respecting Mr. Stayton's amendment, and the more he thought of it the more he was convinced of its impropriety. He quoted the thirty-eighth section of the Act of 1866, and fourth section of Article 19 of the Constitution of 1869, to show that the class of persons sought to be relieved by Mr. Stayton's amendment had no equities as far as he could see, which entitled them to relief. Land locators and agents were going about locating certificates on land held by valid title and occasioning trouble, for the opportunity of compromising and the money it would bring. He knew men who had made a business of it, and still made a business of it. He desired the passage of the Crawford substitute because it would stop this fraud and give repose to title. There was a practice in vogue of lariating land. A man would lay his certificate on a choice piece of land, sell it, list his certificate and relocate it on a choice of piece of land, and so continue. The Act of 1869 prevented location of certificates on titled lands under pain of forfeiture of certificate. He supported the substitute in its entirety.

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[72] The proceedings for this day were taken from the *State Gazette* (Austin), October 16, 1875.

MR. WEAVER said he was in favor of doing justice to the old patriarchs. He had recently received a letter from the heirs of David Crockett, in Tennessee, claiming that certificates in their possession were barred by the Act of 1869. He also read from the *Marshall Herald*, showing that the heirs of Bowie held a certificate that was unsatisfied.

MR. RUSSELL, of Harrison, supported the substitute as a whole.

MR. STOCKDALE said there were few instances in his and his colleagues' district where the certificates were barred, because they were located outside the jurisdiction of the officers having such land in charge. It was not a matter that their constituency was interested in, but was proposed for the general good.

MR. GAITHER proposed as an amendment to the substitute: "Provided, that all land certificates heretofore, or to be hereafter, issued shall be located, surveyed, or patented only upon vacant, unappropriated public domain, and not upon land titled or equitable, owned under color of title from the sovereignty of the soil, appropriation of which is upon the county records or in the General Land Office."

Mr. Stockdale's amendment was lost.

MR. WRIGHT said he would advise caution. Possession of land was evidence of title, and a man might have good claims to his lands which might not be found on the records.

MR. KILGORE said he thought they were burdening the Constitution with many things that the Legislature could better dispose of. He moved to table Gaither's amendment. The Convention refused to table, and the amendment was adopted.

Colonel Crawford's substitute was also adopted.

MR. SCOTT moved to strike out "shall be at the seat of the Government" in Section 1 and insert, "to be self-sustaining, and to be kept at the seat of Government." It would make the Land Office self-sustaining or it would be abolished.

MR. STOCKDALE said as it seemed to him the intention to give away all the land to educational purposes and to actual settlers, they had better abolish the Land Office.

MR. DARNELL offered an amendment that the Legislature should make the General Land Office self-sustaining as soon as practicable.

JUDGE REAGAN was opposed to crippling one of the departments of the Government.

**MR. ROBERTSON**, of Bell, said he was in favor of maintaining the General Land Office.

**MR. WEST** said the committee members were opposed to innovation in the general land system of the State. There had been no innovations in the policy of the State since 1837, and the Constitution of 1869 was the first that had ever attempted to interfere with it. Efforts of the committee were directed to restoring it to its former basis, and leaving it with the Legislature to regulate. If the Legislature required the Land Office to be self-sustaining it might so regulate it.

**MR. DARNELL** withdrew his amendment.

**MR. GERMAN** renewed it and it was adopted.

**MR. SCOTT** thought, as the business of the office increased from the railroad and other certificates, the expenses would diminish, and that some limit ought to be put to the time when it should cease to be an expense to the State.

Mr. Scott's amendment, as amended by Mr. German, was adopted.

**JUDGE REAGAN** moved to strike out Mr. German's amendment from the section and substitute the following: "The Legislature may by appropriate legislation make the General Land Office self-sustaining." He said the difference between his resolution and that of Mr. German was that the latter was imperative on the Legislature to make the Land Office self-sustaining, while his amendment left it discretionary.

**MR. GERMAN** moved to table Judge Reagan's motion, and it was tabled.

**MR. BRADY** moved to amend the section by adding, "Provided no Land Office shall be established at all until such time as it shall be self-sustaining, and this the Legislature shall provide for." It was tabled.

**JUDGE BALLINGER** moved to insert in line 19, Section 4, "or shall not hereafter be."

**MR. WEST** accepted the amendment for the committee.

**MR. NUNN** moved to strike out after "and" in line 19, Section 4, and insert "shall accrue to the benefit of the general school fund of the State, and the Legislature shall provide for resuming control of the same."

**MR. DAVIS**, of Brazos, moved to strike out Section 4.

MR. NUNN said the object of the amendment was that the land alienated should accrue to the benefit of the school fund and not to individuals.

MR. ROBERTSON, of Bell, said he opposed the amendment. He believed that the school fund then had more land than could be settled for many years, while if the lands referred to in the amendments were held out for actual settlement, it would render the school lands valuable, and would the sooner enable them to realize a fund for the education of the children of Texas. Under one of the sections passed over, in accordance with this policy, the committee had provided that headrights should be given to actual settlers.

MR. DAVIS, of Brazos, supported his amendment on the ground that Section 4 was in conflict with the Constitution of the United States prohibiting the impairment of the obligations of a contract.

MR. McLEAN said that the forfeiture of lands for non-alienation was one of the conditions of the charters.

MR. DAVIS replied that under the terms of the charters by the Act of 1854 no forfeiture was provided. He read from *Paschal's Digest,* page 826. There was no forfeiture under that act, nor could the Legislature pass any law impairing the obligation of contract. The only mode of action, if the companies failed to comply with the conditions of their charter, was to proceed by sale as provided for in the act.

JUDGE REAGAN moved to insert in the section the following: "It shall be the duty of the Attorney General to institute the necessary suit to declare a forfeiture;" he explained that where land had not been alienated in accordance with the terms of their charters it was necessary for a judicial decision to be obtained before further action could be obtained.

In reply to Mr. Johnson, of Franklin, Judge Reagan explained that if the alienation of lands had not taken place in accordance with the terms of the charters, such lands might be sold by the Comptroller, and the proceeds be handed over to such corporation, the purpose being to secure the alienation of lands.

MR. STAYTON presented the following as a substitute to the amendment for the section: "It shall be the duty of the Attorney General to cause proceedings to be instituted, for the purpose of having forfeiture declared of all lands granted, or that may hereafter be granted, to railroads, that have not been alienated in conformity with the terms of their charters and the laws under which the grants were, or may hereafter be made; and after such forfeiture such lands shall be subject to location or sale as other vacant lands." He explained that there were two classes. The first, as had been argued, carried no forfeiture with them but might be sold for the benefit of the railroads. The second, and by far the larger class, was where railroads had taken the lands subject to forfeiture for failure to alienate, and they could claim no proceeds from the sale of same. His substitute provided for this class, the proceeds of which could be applied to the school fund or to any other purpose as the Convention might determine.

JUDGE BALLINGER said that while having a general knowledge of the subject before them, he did not thoroughly understand it. He referred to the able opinion of Mr. Davis, of Brazos, but this only went to prove that the matter required further consideration. He moved to pass from the section for the present.

MR. DOHONEY moved an amendment looking to the forfeiture of lands granted to persons or companies for canals or ditches, which were required not by the terms of their charters, to be filled with water, and all lands granted for cleaning out rivers and streams not navigable.

JUDGE REAGAN moved to refer Mr. Stayton's substitute and pending amendments back to the committee.

After explanations from Mr. Robertson, of Bell, and Mr. West on behalf of the committee, a substitute from Mr. Waelder was read for information and the whole section, with substitute and amendments were referred back as asked for.

MR. FLOURNOY moved to recommit the entire article, and it was so recommitted.

The Convention next took up the report of the Committee on Revenue and Taxation, in connection with relieving from taxation the coast counties which had been struck by a recent tornado. The committee members were of the opinion that they lacked authority in the premises, and doubted the propriety of such a step.

MR. RUSSELL, of Harrison, spoke in favor of the relief of the coast counties.[73]

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[73] Mr. Russell's remarks were printed in full in the *Austin Statesman* of October 17, 1875.

He said: "Mr. President, having had the honor to introduce the ordinance providing for the relief of the people residing in the counties named therein, I feel it to be my imperative duty to say something in their behalf. This duty, sir, is actuated by the sole purpose to subserve the public interest and a desire to alleviate the sufferings of a large class of our fellow-citizens, who have been made destitute and desolate by the ravages of the late tornado on our unfortunate coast. Strange, sir, is the action of the committee to whom was referred the ordinance declaring that it was not in the power of the Convention to grant the relief, in contrast with the action of the Convention postponing the general election. In the one case, the Convention was asked to abolish the laws of the country, and it did so; it was asked to set at naught the Constitution of the State as amended in 1873, forbidding the suspension of the laws except by the Legislature, and did so. In fact, sir, it was asked to assume extraordinary powers of government to pass an ordinance, revolutionary in its tendencies, and which will prove, in my humble judgment, wrong and revolutionary in its results, and it did so.

"But, sir, when the Convention is asked, in the name of mercy, justice, and right, to pass a simple ordinance relieving a portion of our distressed and ruined people from the payment of the State tax for one year only—for the relief of a people who, in their dark hour of gloom and sorrow, with their all destroyed, with nothing left them in their sad hour of despair to cheer and comfort them for the loss of dear ones, homes, and the actual necessities of life—we are told by the honorable committee 'that the power does not exist; that the right ought not to be exercised.' Mr. President, in one act of the Convention the right and power is recognized to revolutionize the Government and clog its machinery by suspending and abolishing its laws on the plea of expediency and of saving dollars to the State; while the report of the committee on the relief ordinance denies the expediency and the right of the saving of a few dollars to a people groaning now under burdens too heavy to bear, wrought by a fearful tornado, which crushed their lives and energies, their hopes and homes.

"Sir, in one case we have precedents in point sufficient to grant the relief, while at the other none in point existed; but, bowing to the will of the Convention, I concede for 'expediency's' sake the right and power to adopt the election ordinance.

"The Constitutional Convention of 1866, composed as it was of men of preëminent ability, sound legal learning and statesmanship, adopted an ordinance relieving and exempting the people of Orange County from the payment of the State tax for the years 1865 and 1866, because the ravages of a tornado in September, 1865, rendered them almost destitute. I quote the language of the ordinance: 'Be it ordained by the people of Texas in convention assembled, that all persons who resided in the County of Orange on the thirteenth day of September, 1865, and all the property in said county, be, and they are hereby relieved and exempted from the payment of the State tax now due, and of any State tax that may hereafter be imposed for the year 1866.'

"Are we at a loss for further precedents? No, sir. The Congress of the United States in the exercise of its powers, with commendable magnanimity, relieved the people of Chicago from the payment of all import duties on marble and other material to rebuild their beautiful city after the destructive fire of 1871. This, sir, was the loss of millions to the government; but, sir, 'like bread cast upon the waters' it returned in good season. The saddened hearts of those people, while acknowledging with reverence and humility the divine will of the Omnipotence, also acknowledged with grateful hearts the kind munificence of their government. Do we stop here for precedents? No, sir; the feeling of sympathy and sorrow, of sadness and of interest, that should actuate and burn within the bosom of every man, is a precedent for the righteous and merciful relief sought by this ordinance. Are we to be less generous than the Convention of 1866, or more guardful of the interests of Texas, and refuse this relief? Are we to be less generous than the Congress and turn a deaf ear to the sufferings of our immediate people and mock them in their wailings and their distress? Are we to be less generous than the good people of Boston, renowned for their liberality in the hour of distress, who, far removed from the scene of tears, of blood and of destruction, heard the wails and moans of desolated homes, and sufferings of helpless women and children, as wafted to them on the wings of the tornado, heaven's terrible chastising instrument? Noble and generous people, the prayers of our distressed and ruined will burn with glowing accents of your praise, the proud heart of every Texan throbs in unison with them and chance praises of your unbounded charity. I am not, Mr. President, unmindful of the conduct of our own noble men and women in coming to the relief of our prostrated friends. In their name, I thank them; than them, sir, in a manner befitting chivalric people, who, though prostrated by the winds of heaven, will one day rise from the fiery ordeal and be as the gold from the crucible. What, sir, is their true condition? Go to Wallisville and gaze upon homes devastated; go to Indianola and witness th eawful misery and devastation there; go to Velasco and behold the destruction of property and homes; go to the Benard, where resided some of the purest men and women of the old mother country, Brazoria, and nothing remains to tell of the misery of that awful night but a mound here and there of some kind friend, mother and brother;

go to Saluria, and all is gone; go to Matagorda, the beautiful little town on the coast, twice born, twice erected, and on that fearful night, the seventeenth of September, it again grappled with death and destruction, losing near her all; in fact, Mr. President, go where you will, in all those counties all along our lovely coast and witness the desolation, destruction, and suffering, and you can come to no other conclusion but that one wreck, one ruin, is the portion of all.

"Sir, I believe that if this Convention could know and appreciate their condition, there would not be a dissenting voice in granting the relief. Gentlemen say that they are acquainted with the condition of the helpless there. If this be true, in God's name vote the pittance to them. It amounts to nothing to the State of Texas, but to them it looms upon mountain high. They have not sought or implored this aid; their condition is their only advocate. Their forefathers clung to Texas in her hour of adversity; they sacrificed their lives that her star might shine the brightest in the constellation; that she might be the rich and powerful empire State of the Union. Their sons, resting on their proud Texan honor, achieved for them at Anahuac, the Alamo, and San Jacinto, expect of Texas to cling to them in their hour of adversity. Will she do justice to her past? Will she refuse the pittance asked? Better, Mr. President, if it is to be refused, that it was never asked for. Bad enough, that the winds of heaven should desolate their homes and sever the family circle; bad enough for the drenching rain to have pelted their naked forms; bad enough, to live and hear the weeping and wailing for bread, clothing, and shelter and unable to give it; but, sir, this Convention, to refuse the pittance sought through this ordinance, would be mocking them in their misery— a burden too heavy to bear."

MR. ALLISON said he hoped the report would be adopted and they not suffer their feelings to get the better of their duty, as it was apart from the legitimate purposes of the Convention. The property of these people had been destroyed and there was none on which a tax could be collected.

MR. STOCKDALE said the town of Indianola, which was the greatest sufferer, had been entirely swept away and that the people were moving to other localities. They had nothing left, and it was utterly impossible to collect taxes. Three-fourths of the property of the county was at Indianola, and had been swept away, and if it was a real estate tax which was to be collected, it was impossible—utterly—to collect it. If taxation were remitted it would relieve the officersfrom seeking to collect taxes. Some few of the richer inhabitants might be able to pay, and would pay. He had had no hand in introducing the resolution, which had emanated from the kind and generous heart of the gentleman from Harrison, for which he thanked him most sincerely.

MR. MCCORMICK moved to refer the subject to a select committee of five, and expressed sympathy with the counties mentioned.

MR. CHAMBERS said he was ready for the question then, and believed that they had authority to do whatever was needed. The Legislature would not assemble until too late to relieve them.

MR. WEAVER said he was of a similar opinion. He referred to Reade's "Put Yourself in His Place" as worthy of consideration.

MR. MCKINNEY, of Walker, was opposed to converting the Convention into a missionary society. Its duties would be interminable if not confined to its proper work.

MR. DEMORSE proposed an amendment which gave power to the tax collectors to remit taxes for 1875, in all cases of inability to pay from injury by the storm, in the counties named; also in the counties of Harris and Galveston. He said that one other member of the committee besides himself, did not doubt their authority in the premises, but as to the best mode of doing it. He said this to say in expression of his individual sympathy, and hoped that his amendment or something like it would be adopted.

MR. SMITH, a member of the committee, doubted their authority.

The House declined to refer to a special committee.

The ayes and noes were called for on Mr. DeMorse's amendment and it was adopted by a vote of 35 to 33.

MR. MCCORMICK moved to reconsider and lay on the table.

MR. MOORE said he doubted their authority to remit taxes, and asked them to consider where such acts of legislation would take them.

MR. MCCORMICK withdrew his motion to reconsider.

A report of the Committee on Counties and County Lands, by Mr. King, Chairman, was taken up. It provided that each county might sell and dispose of its lands in a manner to be provided by the police court of said county; actual settlers to be protected in prior right of purchasing to the extent of 160 acres; said lands, when sold, are to be held by counties as the trust fund for public schools, the proceeds to be invested in State or United States bonds. The article was engrossed. A motion to reconsider was voted down.

Mr. Erhard moved to reconsider the vote remitting taxes in the coast counties.

Mr. Fleming moved to table. The Convention refused, and the vote was reconsidered.

Judge Reagan said that the Convention had the power to do it, and that he was in sympathy with the resolution. He referred to the passage of the election ordinance in support of his views.

Mr. Dohoney, while in sympathy with the objects in view, said he doubted their power to act in the premises.

Mr. Ferris said that their power in the election ordinance was implied and incidental to the work of framing the Constitution, and was not parallel to the present case. They had no power to make laws.

Mr. Wright said he was of a similar opinion, and feared that it would open the door to fraud in making the collector the judge of exemption.

Colonel Crawford said that Galveston paid a large proportion of the taxes, and this tax from which relief was sought would amount to one-fifth of the entire tax. He asked that his people be exempt from taxation on account of the drought.

Mr. Scott moved that his county should be included.

Mr. Stockdale said the ordinance did not propose to relieve those who could pay their taxes, hence he had voted for the resolution, because he was able to pay his, but if Mr. Crawford seriously meant to compare the drought of his section with the fearful sufferings of his people he had a lively imagination.

Colonel Crawford said, in both instances, the trouble was due to the visitation of God, and men in his section were without food.

Mr. Mills moved the previous question, which was sustained and the DeMorse resolution was voted down by a vote of 24 to 44.

The Convention refused to adopte the ordinance of the committee by a vote of 16 to 52.

## THIRTY-SIXTH DAY

### SATURDAY, OCTOBER 16, 1875[74]

MR. RUSSELL, of Harrison, moved to add a new section to the article on public lands and Land Office, to quiet titles in El Paso and Presidio counties, suits to be brought within two years in the District Court of Travis County.

COLONEL FORD said he was much obliged to the gentleman from Harrison, but thought it was no part of his business to attend to duties which delegates from those counties were sent to perform. They had no idea of interfering with that gentleman's duties in Harrison County. The titles to land on the Rio Grande were as secure as in any part of the State. Most of them had been conformed by an act of the Mexican Government, and he saw no reason why Mr. Russell should undo this and pursue title. He thought they all lived under the same laws, and could not understand why this course should be pursued by Mr. Russell.

MR. RUSSELL said he admitted his ignorance in some respects, but Colonel Ford did not understand the resolution. He moved that his resolution be referred without debate, according to the rule, and it was so referred.

MR. WEAVER introduced a resolution making it the duty of the Legislature to provide for the safe keeping of all civil and military documents with a view to future history.

### *Executive Article on the Third Reading*

MR. ABERNATHY moved to amend Section 21 by increasing the salary of the Secretary of State from $2,000 to $2,500. It was lost by 45 to 32, all bills on third reading requiring a two-thirds vote.

MR. MCLEAN moved to amend Section 1 by striking out "except the Secretary of State," also Section 21, "he shall hold his office for two years, and until his successor is appointed." It was intended to make the office of Secretary of State elective. In support of his amendment he said he regarded it as a very important office, and if the people were to have a voice in the selection of their officers he saw no reason why this should be made an exception under the Constitution. If it were an office the people had a right to fill it. If it were not an office, but a private clerkship of the Governor, it ought not to be dignified with the name of an office. The people desired to elect all their officers, and the members of the Convention knew it. They wanted each officer of the Government independent of all others. The Secretary of State was an important office. He was the returning officer of the State, and should not be made subordinate to any other officer. He could not act independently at all times, when his office depended upon the mere breath of the Governor, but he could act independently and fearlessly when he knew that he owed his election to the people, and not to one man alone. In canvassing for his in the Convention he had distinctly avowed that every office, from Governor down to the justice of the peace, should be elected by the people, and he made distinct avowal in the Convention that the people would not be satisfied unless the office was made elective. They especially expected to elect their officers. They expectd, too, that the Secretary of State should be the servant of the people, and not the servant of on man. They had tried the experiment of giving delegated power to the first magistrate of the State, and they desired and expected that Convention to provide that they should have the privilege of filling all the offices of the State with persons of their own selection.

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[74] The proceedings for this day were taken from the *State Gazette* (Austin), October 17, 1875.

MR. ABERNATHY said that since they had refused to increase the salary of the Secretary of State to $2,500 they ought not to put that officer to the expense of canvassing the State for his office.

JUDGE BALLINGER said that the mode in which the Secretary of State should be chosen had been very fully discussed in committee, and it was the unanimous opinion that the Governor ought to have an officer whose relations would be friendly and agreeable to him.

Mr. McLean's amendment was lost by a vote of 22 to 54.

MR. MOORE moved to amend Section 4 by striking out the word "two" and inserting "four." This would make the term of the Governor four years instead of two. He said he thought the Convention had not duly considered that question. Among other reasons, he was reminded of the feeling in his section as being adverse to the frequent distraction of a general election. Instead of producing stability and permanency to the reins of Government, it acted just to the contrary. Neither did he see that it made the accountability to the people any more direct, and two years were scarcely more than was necessary to become perfectly acquainted with all his duties.

MR. MILLS said this question had been fully discussed on previous readings, and moved to table it. The House refused.

JUDGE REAGAN moved to amend the amendment by adding, "and he shall not be eligible for two terms in succession." This was accepted by Mr. Moore.

Mr. Moore's amendment was lost by a vote of 27 to 44.

JUDGE REAGAN moved to strike out "and no more" in Section 5. It had reference to the salaries of executive officers. He said he considered it superfluous.

MR. J. P. DOUGLASS, of Cherokee, moved to table the motion, and it was tabled.

JUDGE BALLINGER moved to strike out "shall" and insert "may" in Section 24. It provided that the Governor might receive information from the departments without requiring it under oath, except in semi-annual statements. It was lost by a vote of 38 to 28.

### *Suffrage on Third Reading*

MR. MCCORMICK moved to insert in line 6, Section 1, "murder, manslaughter, theft," as excluding from the exercise of the suffrage.

MR. MCKINNEY moved to amend by inserting in line 7, "or other felonies."

This was accepted by Mr. McCormick.

MR. FERRIS said he did not wish to prevent the exercise of suffrage where a man had been convicted and served out his period of punishment.

COLONEL CRAWFORD spoke of some scores of killing in the heat of passion, and thought the ingenuity of man could not invent a greater degredation to a proud, high-spirited, chivalrous man, than to deprive him of the exercise of suffrage after his offense had been expatiated.

MR. MCCORMICK said he saw no reason why a thief or any other felon should not vote, if a murderer, the worst of all felons, was allowed the privilege.

**MR. DOHONEY** proposed as a substitute for the amendment to strike out after the word "convict," in line 6, and insert the words, "of any felony." His resolution was lost.

**MR. NUGENT** moved to amend by striking out "that amounts to felony."

**MR. HENRY**, of Smith, said he was opposed to making a discrimination in favor of murder. It would be bad enough if the grade was reduced to manslaughter, but he held that they were retrograding from the standard of civilization in giving the suffrage to murderers either in the first or the second degree.

**MR. NUNN** moved an amendment specifying the crimes of which persons convicted should not be allowed to vote.

**MR. MCCORMICK** moved to amend the section my inserting, "no person kept in any asylum or confined in any prison, who had been convicted of a felony, or of unsound mind, shall be allowed to vote or hold office."

**MR. MOORE** proposed to amend by inserting, "persons convicted of felony, with such exceptions as may be prescribed by law."

**MR. MCCORMICK** said he was opposed to offering a premium for crime, whether for manslaughter or murder. There was too much murder in Texas already, and it did not add to their reputation abroad.

## THIRTY-SEVENTH DAY

### MONDAY, OCTOBER 18, 1875[75]

### *Suffrage*

**MR. SCOTT** moved to table all pending amendments. They were tabled.

**MR. ALLISON** moved to add to the end of Section 1, "provided pardons by the Governor shall restore the right of voting."

**MR. KILGORE** moved as a substitute, "unless pardoned by the Governor." It was accepted.

**MR. FERRIS** moved to substitute for the above, "unless relieved by pardon or the act of the Legislature." It was lost.

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[75] The proceedings for this day were taken from the *State Gazette* (Austin), October 19, 1875.

MR. DEMORSE moved as a substitute, "provided that the privilege of franchise may at any time be restored by the Governor on application of the party disfranchised supported by the recommendation of citizens of good standing residing in his own county." He said this would apply not only to those pardoned by the Governor, but to all cases. His amendment was lost.

JUDGE REAGAN proposed to strike out lines 6 and 7 of Section 1, and insert, "and the Legislature shall provide for cases in which persons shall be excluded from voting on account of their having been convicted of felony."

Mr. Allison's amendment was lost.

COLONEL CRAWFORD said that Judge Reagan's substitute would be bad policy. It would leave that vexed question with the Legislature to be varied by every succeeding Legislature, instead of settling what their duty should be by organic law. He referred to crimes of honor. The unfortunate subject of these offenses ought to be commiserated to the end of his days by depriving him of his suffrage.

Men sent to the penitentiary for resisting a tax in their own honor or the chastity of their wives or daughters, ought surely not to be pursued to the end of their lives by being deprived of the rights of manhood, society, and citizenship. He quoted from the report made by Governor Coke's commission to investigate the penitentiary system. This commission had been composed of wise men, and they did not regard men convicted of the above offenses as of 'infamous character.' He also quoted from Governor Seymour's address to the prison association of New York in support of his provision. The area of felony was wider in Texas than in any other state in the Union, for what was misdemeanor elsewhere was felony in Texas. Out of 2,400 or 2,500 convicts in the State of Texas, 749 were between 15 and 21, and 18 were children. The latter would be better attended to at a mother's knee than in a prison. One child was of the tender age of 7 years. These outcasts ought not to be branded forever by our Constitution. Hope ought not to be shut out forever from them. The great bulk of the convicts were there for that, and ought not society to forgive a man when he pleads in justification of a starving wife and children?

He agreed with Seymour as also confirmed by his own experience in the courts, that the brand of infamy ought not to be impressed upon a man's brow forever. As Mr. Ferris had justly said, the law provided a penalty for every offense which should constitute the sole punishment. He opposed the substitute and hoped that some friend of justice would propose that some remedy would be proposed in the Constitution for the redemption of these parties to society.

MR. RUSSELL, of Harrison, said that no man could be convicted of murder under the circumstances referred to by the last speaker, nor ever was convicted, because the law ruled for such cases by a verdict of manslaughter or justifiable homicide. He supported Judge Reagan's substitute. It was strange doctrine that a defense should be made for murder, for it was the crying evil of the country.

MR. DOHONEY proposed to strike out of lines 6 and 7, "all persons convicted of bribery, perjury, forgery, arson, rape or robbery," and insert "all persons convicted of felony, subject to such restrictions as the Legislature may make." He did not see why they should discriminate in favor of murderers and thieves whose offenses were just as bad as bribery, perjury, or robbery.

MR. MCKINNEY said in reply to Colonel Crawford that it was not the Constitution that would place a ban on the brow of a man coming out of the penitentiary, but it was the social law that banned him, the fact of his being convicted by a jury of his countrymen. He said he was willing to leave these matters to the Legislature. Crimes had been committed in the penitentiary, judging from the report held in his hand, unfit for Christian lips to repeat or Christian ears to hear, so that they could not expect to be much benefited by their incarceration. He hoped the Convention would look into the things complained of in the report, arising under the lease. He was opposed to making a division between the two classes of criminals, as suggested by Colonel Crawford.

MR. JOHNSON, of Franklin, said he thought it strange that Colonel Crawford, who had so jealously guarded the ballot box the other day on the poll tax question, should now want to open it to that worst of all class of criminals, murderers.

COLONEL CRAWFORD said the last gentleman had misunderstood him. Murderers were imprisoned for life.

MR. JOHNSON said that his plea of charity included murderers convicted in the second degree.

MR. FLANAGAN called for the previous question, which was sustained, and Mr. Dohoney's amendment was carried by a vote of 68 to 10.

The article was engrossed by a vote of 61 to 18.

### *Legislative Article on Second Reading*

MR. GERMAN moved the following amendment to Mr. Abernathy's substitute: "Insert after the word 'money' in Section 51, line 264, 'public land or thing of value.'" The section prevented the Legislature granting aid to corporations, not to actual settlers.

Upon motion of Mr. Fleming, the substitute and amendment were tabled by a vote of 47 to 32.

MR. KILGORE moved as a substitute to Section 2: "The Senate shall consist of ——— members, and the House of ——— members, until the first apportionment after the adoption of this Constitution, when or at any apportionment thereafter the House of Representatives may be increased by a vote of two-thirds of the Legislature." He said he proposed this as a compromise.

MR. MARTIN, of Hunt, proposed the following substitute: "The Senate shall consist of thirty members, and shall never be increased above this number.

"The House of Representatives shall consist of ninety members until the first apportionment after the adoption of this Constitution, when or at any apportionment thereafter, the number of Representatives may be increased by the Legislature upon the ratio of not more than one Representative for every 15,000 voters, provided the number of Representatives shall never exceed 150."

MR. CHAMBERS said the sub-committee on apportionment, after much deliberation, had decided upon 31 members for the Senate. He hoped Mr. Martin would adopt that number.

Mr. Martin accepted the suggestion.

MR. DOHONEY said he thought the substitute came nearer to a compromise than anything else.

Mr. Martin's substitute was adopted.

MR. MARTIN, of Navarro, moved as a substitute to fix the Senate at 25 members and the House at 70, never to be increased by any future apportionment to more than 33 members of the Senate and 100 in the House.

MR. CHAMBERS said the committee had, after great labor, gotten the thing adjusted, and it would be well not to disturb it. It would necessitate going over the whole of the work again.

On motion of Mr. Mills, the substitute of Mr. Martin, of Navarro, was tabled.

MR. BROWN, member of the Committee on Apportionment, said the committee had completed their labors and had decided upon 31 members for the Senate and 93 for the House.

MR. FLANAGAN asked if the embarrassment of the committee was due to Harrison County.

MR. BROWN answered in the negative, saying that it extended to the whole State. He moved to amend the section as submitted by Mr. Martin, of Hunt, by making the House read 93 members.

MR. McLEAN said he was opposed to the amendment. He thought that thirty and ninety, respectively, for the two branches of the Legislature was about right, and saw no more difficulty in dividing the registered voters by those numbers than by any other numbers.

MR. BROWN said he did not believe in limiting the popular branch, as suggested by Mr. McLean, and did not think that what might be adequate for a voting population of 212,000 would be sufficient for a voting population of 8,000,000.

COLONEL FORD said he wanted Mr. McLean put on the Committee on Apportionment if the latter thought there was no difficulty in settling the question.

Mr. Brown's amendment was adopted.

MR. ROBERTSON, of Bell, proposed a substitute for the section with this feature, it included among the grants of land that might be made, "the grants of headrights to actual settlers in the public domain."

THE PRESIDENT ruled that the subject matter of the substitute was included in the amendment of the gentleman from Camp (Mr. Abernathy), which had been tabled by a vote of the Convention. He put the question to the House whether they would entertain the amendment of Mr. Robertson, and the House refused.

MR. WAELDER proposed to strike out the two last lines of Section 5. It contained a provision (blank) for the next meeting of the

Legislature. He thought this would be provided for by an ordinance, and hence it was useless to insert it in the Constitution. His amendment was adopted.

MR. DEMORSE moved the following as a substitute for Section 49, as substituted by Judge Reagan some days ago: "The Legislature shall have no power to create a public debt under any circumstances exceeding $300,000, and no debt whatever except in case of invasion."

MR. DEMORSE said that some few days since when the clause referred to was under consideration, the House, he believed, adopted the substitute of the gentleman from Anderson under a misapprehension of the effect of its action. He said that Judge Reagan's amendment was to the clause originally reported restricting debt to $500,000, and then only in case of invasion, and his amendment left it open to a possible debt entirely unlimited in case of invasion, and provided that any Legislature, the next for instance, might incur a debt of $200,000. The gentleman's proposition was so worded that the last words which fell upon the ears of the Convention were that the specific amount of debt should not be more than $200,000, and a large proportion of the members voted under the impression that no debt could be created larger than $200,000. His (Mr. DeMorse's) amendment was simply to draw out a correct expression of the will of the Convention on this subject. He believed that the general impression of the Convention members was in favor of incurring debt to repel invasion, and then only to a limited extent. In case of invasion it was only necessary to provide for immediate preliminary action, after which the General Government would interpose its forces and repel it. The sum named for his amendment was ample for any emergency that might arise. The people were opposed to the creation of any new debt. They proposed to pay their debts as they went along. The fact that some of the appropriations might not be enough to meet current expenses presented no objection to his amendment, for they were simply deficiencies, which might be carried over to the next Legislature; as was done by every other state in the Union and by the General Government itself. They wanted no more debts. They wanted to restrain the expenditures to their capacity to pay annually, and with a view of fairly eliciting the opinion on the subject, he had proposed his amendment to the clause as amended.

MR. McLEAN proposed the following amendment to that of Mr. DeMorse: "Nor shall the county court of any county, nor the municipal authority of any incorporated town or city, ever create any debt against said town or city, provided that towns situated in the coast may incur debt in the creation of works for the protection of life and property against storm by the votes of those who pay taxes in said towns and cities."

JUDGE REAGAN spoke in defense of his substitute. It provided that no debt should be created "except to supply occasional deficiencies in the revenue, to repel invasions, to suppress insurrections, to defend the state in war, or pay existing debt." The debt in any or all cases was never to exceed $200,000.

JUDGE REAGAN said that the only possible contingency by which debt could be created by his substitute was in case of invasion. It was copied from the Pennsylvania Constitution adopted last year, except in one case the amount had been reduced. Under Mr. DeMorse's amendment no State bonds could be issued to take up the old bonds, could create no debt to supply deficiencies in revenue and it would leave us without the power to raise one dollar to carry on the State Government; and its functions would either have to be stopped in whole or in part until its revenues could be augmented. Surely it could not be intended that no mode should be left to supply the casual deficiencies in revenue. Suppose a fire should occur in the Treasury, must the whole State Government stop because the funds were burned up? He thought that it was right to prevent a state from incurring unlimited indebtedness. He also believed in placing restrictions on municipalities. He denied that a debt could be created without limit under his substitute, but he thought that such a thing was possible under the amendment of Mr. DeMorse.

MR. DEMORSE said he desired to say a few things in reply. It was very easy to get up a plausible theory of the possibilities or necessities of the State. Gentlemen expressed a high regard for the wisdom contained in the Constitution of 1845. That Constitution provided that the debt should never exceed $100,000, except in case of war to repel invasion and suppress insurrection; and in no case except by a vote of two-thirds of both Houses, and already they had a debt of millions. Judge Reagan had suggested that his (DeMorse's) amendment would prevent the reissuance of bonds for debts already existing. To this he replied that provision had already been made in another clause of this article for that purpose, or could be met by a provision already reported in the article on taxation. His amendment was to prevent the creation of new debts by the issuance of new bonds. Any deficiency, as he had said before, could be carried over from one Legislature to another. It was easy to conceive possible cases, but every gentleman who had had any experience in another line at all in questions of public debt knew that if a loophole should be left open for the future creation of debt, it would be created on mere plausibilities in cases of imaginary necessity, and when there was no real need. He claimed that the people of the State had had enough debt, had been ground into the dust sufficiently, and they were not willing to bear any more. As he had said before, in case of invasion the General Government would come to a state's assistance, and no very large debt would have to be incurred. The term "insurrection" had no proper place in our theory of government. Such an occurrence was improbable—anything beyond a mere riot involving a small community, or county, and easily repressed by a small force. The gentleman's argument was based upon *possible* cases. He only asked members to give the subject due consideration and to vote in accordance with the justice and propriety of the case.

MR. NUGENT inquired if it would not prevent appropriations for frontier defense.

MR. DEMORSE said that that was already provided for upon the basis of the annual revenues of the State, and in the estimate made by the Comptroller and furnished at his request to determine whether the system of taxation reported by the committee would be adequate to the necessities and responsibilities of the State.

MR. WAELDER said that the substitute did not provide for existing debt.

MR. DEMORSE said that if it was not provided for in the amendment it had been provided for in the report he had made that morning.

MR. WAELDER said that the provision was made in the section for the reissuance of bonds, but that part had been stricken out by

Judge Reagan's amendment, and no other provision had been made in the article for the Legislature to incur debt in payment of existing debt.

MR. DILLARD moved to table the substitute and amendment.

His motion was carried by a vote of 47 to 28.

MR. DARNELL moved as an additional section the following: "No exclusive privilege shall ever be granted to any corporation organized for the purpose of constructing and running any railroad or railroads, or for any other association of individuals for any purpose whatever, that has heretofore been, or may hereafter be created over any of the public domain, but the same domain shall be held equally open to location by law, and may have a just claim against the same."

MR. DARNELL reminded them of the case of the Texas & Pacific where a belt of land eighty miles wide was locked up from actual settlement by this policy of reservation to railroads. The Fourteenth Legislature also did the same in chartering companies to cut ditches for irrigation purposes on the highlands where there was no water, giving them a reservation of three miles on either side not subject to entry by certificates or settlement. He said he wanted the public domain open to those only who had just claims against it.

JUDGE REAGAN said he feared the amendment would go farther than was contemplated, and interfere with the rights of corporations, with the road bed and sidings of railroads, etc.

MR. DARNELL said he had no idea of that description.

MR. WEST said he was afraid it would interfere with the rights of railroads then in process of construction.

MR. STOCKDALE suggested that the amendment would come better in the article on railroads or public lands, as those would contain restrictions on railroads by the power given to the Legislature.

MR. WEAVER said he thought the amendment just and proper and that it would not interfere with the rights of railroads.

MR. FLOURNOY proposed the following substitute: "The Legislature shall not hereafter have the power to secure for location any particular part of the public domain, for future location by any railroad or any incorporated company or any private person."

JUDGE REAGAN said he thought the true policy of Texas was to encourage the construction of railroads to develop the material resources of the State, to furnish means of travel and transportation. He regarded it as a wise disposition of the public domain to encourage such companies as liked to invest their capital in Texas by giving them the alternate sections, they being charged with the cost of surveying and all attendant expenses. He was opposed to the legislation of the Twelfth Legislature with regard to railroads and he trusted it might never be repeated. They should want their present railroad facilities trebled before they had enough. He argued that every road and every prospective road brought relief to those who were paying taxation on wild lands. The land held by those who fought the battles of the revolution were of no more value now than they were fifteen years ago, simply for the want of railroad accommodations. He was opposed to putting back the hand on the dial of time or to put the breaks on progress, but hoped to see the same energy and enterprise characterize the people in the future as in the past. For those reasons he favored the donations of land in alternate sections as a bonus to railroads.

MR. WADE moved as an amendment, "that no reservation of public land which hereafter may exist in favor of corporate companies and all such reservations hereafter made shall be void provided that no company shall be deprived of its right in compliance with its charter."

MR. FLOURNOY said he was in favor of giving a portion of the public domain to aid in the construction of railroads, but was opposed to setting apart a reservation for that purpose, either to railroad companies or to any other parties. His amendment did not propose to interfere with any existing charter, the ground for its road-bed, sidings, depots, etc., but hereafter to provide that no reservation should be set apart for railroads or other companies and debarred from general settlement. This did not interfere with the right of the State to grant right of way to railroad companies 200 feet in width. That could be done through private property even. If railroads neglected to carry out their contract, such land for road-bed, etc., reverted to the State just as it would to individuals where obtained from them. The question was whether choice portions of the public domain should be shut up from settlement for from five to ten years for the benefit of railroads. He was opposed to it. He reminded them of the Texas & Pacific which had failed to carry out the terms of its charter. It would be a question for a future Legislature to determine whether it had not forfeited its charter, or whether in justice to Northern Texas, the time and terms of the charter should be extended. It was a productive section of the country, inviting the construction of railroads and capable of supporting them when constructed. Railroads would not pay for construction unless they could realize something from the industrial energies of the people already there, and the support that would follow their construction. He was opposed to holding up the public domain from settlement to await the construction of railroads.

MR. ROBERTSON, of Bell, spoke[76] in favor of Mr. Darnell's proposition refusing exclusive privileges to corporations, but throwing open the public domain to just claims only.

He said: "Mr. President, I shall support the substitute of the gentleman from Tarrant. As the gentleman from Anderson observed, 'it is as well to meet this issue first as last,' and to decide whether we will check this policy that is carrying us to ruin. As suggested by the gentleman from Galveston (Mr. Flournoy), the policy that has controlled this State, and which was inaugurated in 1854, has been a failure, and it has not answered the ends that were claimed for it by its friends. The policy inaugurated in 1854 was to build railways through the vacant lands of Texas, through the unsettled portions of Texas; to get the railroad sections settled by actual settlers within twelve years, and to reserve the alternate sections—not from location by those who had genuine certificates against the Government, but to reserve them for use of the State. This was a wise policy if it had been properly carried out, but I contend that up to this day no good has resulted from that policy. It is well known that the railroads that have been constructed have passed through the more settled portions of the State, and the wild and unsettled portions are without a railroad today, in addition to which large reservations of land have been held back from actual settlement, and thus the progress and development of Texas has been prevented by it. I cannot undertake to say that the policy which obtained was the policy of the gentlemen who first worked up a system of railroads in the State, for it was not their policy to exclude one portion of the people at the expense of the other.

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[76] His remarks were published in full in the *State Gazette* (Austin), October 20, 1875.

"Their policy was to build up railways subordinated to the purpose of diversifying the interests of the people, equally in every portion of Texas. Such has not been the case. Only one railroad has been built to the coast, the remainder going latterally through the State and simply with a view of making a highway through Texas with our money and land, and withholding it from the benefit of the actual settler. It is the settler, the tiller of the soil that gives permanency and wealth to our Government. Railroads, though they may carry out our commerce, are not needed until you have the commerce for them. As suggested by the gentleman from Galveston, they will not go into a country devoid of tillage, devoid of commerce. But still it has to be determined whether we will extend this policy, which, sir, I contend, has been so ruinous to the best interests of Texas; continue to grant charters; to grant reservations of land to build railroads at some future day through the unsettled portions of our unsettled domain.

"Mr. President, they have had twenty years or more to build the Southern Pacific which was to be a protection of Texas across our border, which was to relieve us of the burdens of defending a large proportion of our frontier, which gentlemen now clamor against so loudly when they are called upon to make provision for defense. The other day, it will be remembered, that when a provision was sought to be inserted in the Constitution enabling the Governor to defend the border, a great clamor was raised against it. The policy was to build railroads for the protection of that border, but it has proved but a poor protection. I apprehend that no gentleman will claim otherwise. Now in justice to the best interests of Texas, and to those who agree with us, let us check a policy that is calculated in itself to bring ruin on the country, to retard our progress, retard our settlements and to drive from us the very men who will develop our resources.

"Is it possible that we shall continue the policy of extension from time to time of a system which has heretofore been fraught with every ill and with no good whatever? Another feature in this railroad system I want explained by gentlemen on this floor who defend railroads, and that is, why railroads wherever they have run, instead of aiming to build up settlements already in progress, already flourishing, have avoided them, destroying the towns along their route and building up new ones for themselves, destroying the towns of the State in nearly every instance, and levying blackmail on both cities and towns to carry their railroads through them, or else run them a short distance from the towns, thereby destroying the permanence of cities and the wealth of the country for their own gain; for their own benefit. With the experience of the past to guide us, cannot we govern ourselves as becomes men who are determined to represent the people and the property of Texas and not as the representatives of foreign corporations. Mr. President, let us look well to our acts. With these views, I believe that the substitute offered by the gentleman from Tarrant is right and just and proper, and should prevail in the interest of the people."

MR. GERMAN said he thought it would be well to await the action of the special committee on that subject before deciding that important question.

MR. STOCKDALE moved to refer the substitute and amendments to the Committee on Public Lands, and they were so referred by a vote of 50 to 21.

MR. MILLS moved to insert in line 126, Section 25, after "Senator," "or that no county be entitled to a Senator unless it has the requisite number of electors." It was lost.

MR. MCCORMICK moved the following as a substitute to Section 43: "At the first session after the adoption of this Constitution the Legislature shall appoint no less than three and not more than five persons, learned in the law, whose duty it shall be to revise and arrange the statute laws of this State, both civil and criminal, so as to have but one law on any one subject, all of which shall be in plain English, who shall at as early a day as is practicable report the result of their labors to the Legislature for adoption or rejection, and such provision shall be made for every ten years hereafter."

MR. CLINE said he wanted to know who was to determine what was plain English.

MR. MCKINNEY, of Walker, said he was opposed to the plan on the score of the expense it would entail.

MR. WEAVER said he thought it a reflection on all the foreign-speaking population of the State.

MR. MCCORMICK said he expected the last gentleman to oppose plain English.

The substitute was adopted.

MR. WADE moved to strike out "plain" in the substitute.

JUDGE BALLINGER moved to strike out "all of which shall be in plain English." This was adopted.

MR. CLINE moved to amend by striking out "but one law on one subject."

**JUDGE REAGAN** suggested that the amendment should be altered so as to read "all the laws on one subject."

Mr. Cline's amendment was adopted.

**JUDGE BALLINGER** moved to add to Sections 43, 35, and 36, "shall not limit the effect which may be given by law to such digest." The amendment was adopted.

The article was engrossed with only sixteen dissenting votes.

## THIRTY-EIGHTH DAY

### TUESDAY, OCTOBER 19, 1875[77]

### *Immigration*

**MR. RUSSELL**, of Wood, supplemented the majority report by the following resolution: "The Legislature shall not have the power to appropriate any of the public money for the establishment and maintenance of a bureau of immigration, or for any purposes of bringing immigrants to the State."

**MR. WAELDER** offered as a substitute an article submitted in the minority report providing for "the establishment and maintenance and support of a bureau of agriculture, statistics, and immigration. In support of this he said there seemed to be no great desire for immigration, but so far as he could see as to what could be gathered from the acts of the Convention at that hour, it did seem that immigration was not desired and that the immigration which would be greatly induced by the establishment of an immigration bureau, was less desired than the other, that is, immigration from beyond the Atlantic. Yet this immigration had done much for the improvement of the State of Texas. He reminded them of the case of the region lying between Austin and San Antonio, the valley of the Guadalupe, from San Marcos to within a few miles of San Antonio, which had been converted from sterility into blooming gardens. That foreign population had done more for that section in the advancement of the agricultural interests in the west than any other population within the same limits, every one would admit. Those who had traveled along the Colorado River in the counties of Bastrop, Fayette, Austin, Bell, and Colorado, knew that the fairest portions of those counties had been converted into garden spots by the energy and industry of foreigners who settled there. Was it desirable that this class of population should be excluded in the future? If the majority report was adopted by the Convention it would be understood to be a declaration to that effect. Even a Republican Legislature had been sensible enough of the advantages of immigration, to invite and induce immigration and to protect immigrants when they came to Texas. He did not defend the bureau as established by the Twelfth Legislature, for the purposes sought to be accomplished by that bureau were a failure rather than otherwise. He did not say that the system and the management of the system should be continued, but that the Convention should not fail to provide some mode by which immigration should be encouraged and immigrants be made to feel that they were welcome in Texas. This he thought would be induced by the establishment of a bureau of agriculture, statistics, and immigration, such as he had proposed, not to pay men for coming here, but to disseminate useful information regarding the State, such as was always required by persons about to seek new homes. It might be said that such information would be disseminated by private enterprise, such as the *Galveston News Almanac.*

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[77] The proceedings for this day were taken from the *State Gazette* (Austin), October 20, 1875.

JUDGE REAGAN said it was not published any longer.

MR. WAELDER then said that channel of information had been closed. He then went on to argue that however valuable such information might be, it was infinitely more valuable when coming with authority from an officer of the Government. It would also furnish valuable information for the people of Texas, which was of such vast dimensions that one section was but illy informed of what the other possessed. The expense would be trivial compared with the value of the information, and would be more than compensated for in the increase of population and the proportionate increase of wealth and prosperity attending it. The bureau, he thought, would require but one officer at its head, and perhaps a single clerk, with a liberal appropriation for stamps and printing. He was told that there were sections where an increase of the population was not desired, but he knew there were many parts of the

State where population was needed; and it was his deliberate conviction that what Texas most needed to build up her prosperity and develop her resources was more population.

Judge Reagan moved to amend the substitute by striking out the proviso and inserting the words, "provided that the money expended by this bureau shall be for the collection and dissemination of information on these subjects, and that no money shall be paid out for bringing immigrants to the State."

Mr. Sansom proposed the following as a substitute for the substitute and amendment: "That there shall be added to the clerical force of the Comptroller's office one clerk who shall arrange in tabular form all statistical information and the laws to be passed by the Legislature, for the purpose, relating to the agricultural, mineral, and mining interests of the State, and it shall be the duty of the Legislature to provide from time to time for the publication of the same."

The Sansom substitute was ruled out of order.

Mr. McLean said that he had opposed the establishment of the bureau of immigration in 1870, while a member of the Lower House of the Legislature. Mr. Waelder had acknowledged it a failure and had failed to show that it had acted as a stimulus to immigration. Mr. Waelder had always been a man of liberal views, but he (Mr. McLean) thought he had taken a sectional view of the immigration question. He said he admitted all that was claimed for the German population and the success and prosperity which had attended their efforts in sections which were not regarded as best adapted to agriculture, but they had not come to Texas under the stimulating influence of an immigration bureau, its agents, or publications. They had come to Texas in a spirit of enterprise, for the sake of enjoying free institutions and free lands, and that their industry might be rewarded and their prosperity grow up in harmony and in consonance with American political and social institutions. Private enterprise, the landowners, and the press of the country would desseminate the necessary information as to soil, climate, etc., without the expense of a bureau. He contended that the article sought to be substituted by Mr. Waelder proposed to give to the Legislature a power to establish a bureau unlimited in the amount of money to be expended in its organization. He believed that immigration ought to be allowed to pursue its course by a natural process, if they desired a healthy and contented growth of the population. He said for those reasons he would oppose the substitute and the amendment.

MR. GRAVES moved the previous question, but when several members remonstrated he withdrew his motion.

MR. SANSOM said he was sorry Mr. Waelder had misconstrued the sentiment of the House. He felt sure that no member had designed to aim at any particular class of immigrants, nor was there any disposition to repel immigrants by the refusal to report favorably on the establishment of an immigration bureau. His people were opposed to a bureau, though they would welcome any honest man, come whence he might. He thought his substitute, if it had been entertained, would have covered the whole ground. He could not understand why they wanted to crowd Texas so rapidly. In 1866 they had a small population, it was true, but had as good a society and population as they had had in the State at any period since that time. The struggle was unequal in thickly populated countries, and the rich became richer and the poor poorer. He could not see why they wanted to crowd Texas. For those reasons he would oppose the substitute.

JUDGE REAGAN said he was proud of the generous spirit shown by the speakers on both sides of the question. The purpose of the delegates favoring the proviso seemed to be to fix a definite limit on the amount of money that might be spent on an immigration bureau. He thought the members advocating a bureau would be willing to meet that desire. But whatever position the Convention should take should not be construed as hostile to immigration. If they adopted a clause which might be construed as injurious to the interests of immigration, it might operate prejudicially to the adoption of the Constitution. The people were familiar with the policy which had been pursued in Texas and the older states and countries with reference to immigration, and they had seen a growth unparalleled in some states in the history of the whole world. The people did not desire to be burdened with taxation for the purpose of paying the passage of immigrants to this country, but the proviso he had proposed to insert would relieve them of any responsibility in that direction. He said he would favor the adoption of the substitute if his amendment were incorporated.

MR. WAELDER said he would accept Judge Reagan's amendment.

MR. BROWN said he held then, as he had during the canvass, that honest government, low taxes, and impartial administration of the laws were, together with the salubrious climate and fertile soil of Texas, the best inducements to immigration. As a part of his speech he read an amendment which he would have proposed, if occasion had offered, leaving it with the Legislature to provide a bureau of agriculture and statistics. While he was opposed to anything very extensive, he thought it would be going back on the progress and spirit of the age if they refused to do something in that direction. He did not agree with Mr. Sansom that a matter of such importance should be left to a mere clerk. He had no complaint to make against the head of the existing bureau. He thought he was an honest man who had written his name in the history of Texas, and he hoped that he, or some other such man, one who understood the farming interests of the State, would be put at the head of the new bureau, if one were established.

MR. KING spoke at length in favor of the substitute.[78]

He said: "Mr. President, I did not anticipate that the subject of immigration, and the policy of the State, to be decided upon by this Convention, in reference to that important subject, would come before us for action this morning.

"I recognize the fact that delegates are not here in the particular interest of their several districts or sections; and I trust I understand the responsibilities resting upon each member of this body, as reflected in the results of his individual action, upon the destinies of the whole State. But there are questions with which this Convention proposes to—and of which I think it should take cognizance—whose final adjustment in the Constitution will fall with far greater effect upon some section than upon others. This result is unavoidable, in the nature of things, and is an inevitable consequence of the great territorial extent of the State and the diversity of its interests. The question of immigration is one of these. The western half of Texas is comparatively unpeopled. That section of country, I have the honor in part to represent, has not more than an average of one-tenth of the population to its area, as compared with other sections; nor even in its most thickly settled counties, more than one-hundredth part of that which it is capable of sustaining in abundance. Hence this subject is one of especial interest and moment as directly affecting that great and rich, but hitherto comparatively neglected, section of our common State.

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[78] Mr. King's remarks were published in the *State Gazette* (Austin), October 31, 1875.

"But, sir, however immigration may be needed to develop certain localities, I hold that it is a subject in which the whole State as a body politic, is virtually interested. As affecting the material growth and power of the State it overshadows in importance all others. What is the question, as presented by the report and accompanying article offered by my colleague, Mr. Waelder, the chairman of the committee? In that article he proposes the establishment, in connection with immigration, of a department of agriculture and statistics.

"By means of this bureau, information of our country, its climate, soil, and products; its people and its institutions is to be disseminated abroad. This information, so given, will go out to the world with the stamp of truth upon it—not with a doubtful character of that furnished by interested parties, who may suppress facts or exaggerate advantages; but as my colleague has well said, being published by authority of the State, it will command confidence and credence. Its effect will be, by a simple and faithful portrayal of the incomparable attractions of our State, to stimulate the exodus from the other parts of the world and direct it hither. Then, sir, this following as a result, the question is, does the State, as represented by this Convention, desire population or not? This is the only issue in this debate, and it seems to me that it ought to carry with it, in letters of blazing light, its own affirmative answer.

"If, then, the State wishes to increase her population, and thus add to her industrial wealth, to swell the volume of her revenues, and to raise herself at once in the scale of influence and power, this question must address itself at once to the statesmanship and wisdom of this Convention.

"We have today in Texas a population of 1,500,000 souls. Texas contains an area of 270,000 square miles. This gives us about five souls to the square mile. Other states of the Union have from fifty to two hundred inhabitaants to the square mile. And the Kingdom of Belgium has more than three hundred to the square mile.

"At the rate of 100 only to the square mile Texas would have 27,000,000 of people within her borders.

"Now, sir, it was seen that this Convention, holding within its hands in so great a measure the future welfare and destiny of the State, has before it no greater work, no nobler or wiser policy, than that which looks to peopling this immense territory with those who will bring willing hearts and strong arms to till the fertile soil and develop the magnificent but almost untouched resources of wealth with which Heaven has so lavishly blessed Texas. Let them come whence they may. We need not be afraid of getting too many. We have plenty of room, and some to spare.

"It has been said during this debate that there is a worthy class of citizens who own lands in the State, who have long been looking forward to the enhancement in value of these lands, that they might derive some benefit from them during their lives. This class embraces the early pioneers of Texas, the veterans and heroes of the war of independence. Well, sir, there are none of us who do not recognize the services of these fathers of the State, whose patriotism and courage won an infant empire, which they baptized with their blood. In the consideration of this question, this may well be regarded as an additional reason which commends itself to the Convention. But it is not as affecting the interest of any class of citizens that this matter is to be considered. Immigration ought to be encouraged as a matter of State policy. The true question is, what interest has the State in it?

"As a matter of statistics, it is well known that immigrants will bring with them about $500 per capita, or about $1,500 to each head of a family. It is estimated that 250,000 persons have come to Texas during the past year, bringing with them into the State no less than $125,000,000. But this is not all. The newcomer immediately invests his money in taxable property—generally in land—upon which he makes his homestead. He enters at once upon its cultivation, and becomes a producer and a taxpayer, and to that extent a benefit to the State and a relief to other taxpayers. For, in proportion to the increase of the number of taxpayers and of taxable property, he lightens the burdens of government upon the shoulders of the individual. Thus it is equally the interest of the State and of the individual citizen to facilitate the growth of our population—for the interest of the one is the interest of the other. Now, how are we to get them? Shall we, according to the theory of my friend from Dallas, wait upon the slow process of natural increase and the usual course of immigration—a process by which, however rapidly immigration may be pouring into some sections of the North and the East, it will take the period of generations to people the whole State? Or shall we, at the comparatively trifling expenditures necessary, by making known to the world the surpassing advantages offered by Texas to the immigrant, abridge this tardy process and fill our waste places at once with the millions of enterprising and intelligent people in the United States and in Europe who desire trustworthy information about Texas, and only need and wait for such information to make their homes among us?

"I venture to say, Mr. President, that there are but few members of this Convention who are not in receipt of many letters from one quarter of the country or another, making inquiries about Texas.

They want to know all about the climate, soil, products, society and the respective advantages of different localities, and they generally exhibit, by the character and number of the questions they ask, as much ignorance of Texas as anxiety for exact information. It is known to members of this body that a cry has arisen in many of the older states, and I particularize among other states of the South; that large localities are being depopulated. The young men, the hope of those states, are abandoning their native soil, and are seeking homes in the West. Where are they going?

"It is true we will get several hundred thousand immigrants this year. But this is largely due to the ability and indefatigable energy of the present head of the Immigration Bureau—General J. B. Robertson. And I may say here, sir, that the State owes that gentleman a debt of gratitude for the fidelity and patriotic spirit which characterize the administration of his department,—qualities which equally distinguish his brilliant services in the past. But, after all, we are receiving but a small proportion of this population. That which does find its way to Texas is but a streamlet as compared to the swelling tide which has sought other states and the territories of the West. They would all come to Texas if they knew the facts. They would naturally prefer a state of their own latitude filled with their own people, and in thousands of instances their own friends and kindred.

"I need not animadvert on the attitude of hostility to immigration in which the State would be placed by the adoption of the provision proposed by the member from Wood, by which the Legislature is prohibited from appropriating money to this purpose. Such an attitude would be most unfortunate, to say the least. Take the question in another aspect. I know, sir, that any partisan policy would be utterly out of place in a constitutional convention. We are here to represent the sovereignty of the whole people, not the views or politics of political parties. As a matter of fact, however, it is well known that this Convention is Democratic. And nothing in the political history of the country is better understood than the square unequivocal position of the Democratic party—both before and since the memorable know-nothing contest—as the champion and friend of the foreigner. But, sir, adopt such a declaration in your organic law, and what does it announce to the world? Why, that Texas has departed from its traditional policy; and you may say to the stranger, whether from America, 'We do not want you in Texas, stay where you are, or go elsewhere for a home.' I hope this Convention will not place the State in such an attitude before Christendom!

"The article offered by my colleague does not impose a tax to pay the way of the immigrant. It only contemplates the dissemination of reliable information as to the resources of the State. These resources are not only unknown out of Texas, but are hardly known to ourselves. Within 100 miles of this capital there are mines of the precious metals, and of copper, lead, and iron, proven by assay to be as pure as any in the United States.

"And yet how many people know it except a few in Texas? Publish this fact under the authority of the State, and capital will not be long in finding its way there; and these mines, which have remained idle since the days of the Spanish Missions, will again yield their treasures. This is but one instance. The value of the mineral deposits of Texas cannot be estimated. They are believed by those who profess to be judges, to exceed those of California. But capital is afraid. The dollar is a timid mover, and goes only where sure of welcome. We need not expect any influx of capital or population unless this information as to our resources of every kind addresses itself to the confidence of those who read it. It has been said that the New Braunfels colony came to Texas voluntarily and without assistance. I will be pardoned for saying that the colony was planted under the auspices of an organized emigration society. They were poor when they came. They went to work under the spur of necessity, and today they and their children, and their children's children are prosperous and happy. They have subdued the adverse features of the soil and climate, and have demonstrated that crops can be made almost without the rains of Heaven. Let me say under this head that partial as the prejudice of race may render some of us to those of American birth, it is impossible to overestimate what has been done for our State—especially for Western Texas—by the industry and hearty enterprise of our German population. Intelligent, hard working, honest, and frugal, they have wrested much of our frontier from the grasp of the savage, have established law abiding communities wherever they have settled, and have made the wilderness bloom with smiling plenty. They are successful agriculturists and producers. They are prompt to pay their taxes, and have contributed largely to swell the volume of the revenues of the State.

"I ask, Mr. President, is not such a population worth securing? Sir, in wisdom and good policy there can be but one answer to this question.

"This Convention has met to frame a Constitution and to fix a State policy upon certain grave questions. We will commit a grave blunder if we place the State in an attitude of hostility to immigration. It will send a pang of disappointment and chagrin to the hearts of the friends of Texas throughout the world, should she take a step so unworthy of herself and of the proud position she occupies today in the great family of American states. I trust, sir, that wiser counsels will prevail. For I hold that the highest considerations of good policy dictate the encouragement of the growth of our population by every reasonable measure within our power. This population, embracing the most enterprising and intelligent of every state and people, will be sure to come if we only furnish them the information necessary to enable them to understand the advantages of Texas."

Mr. McCormick said he could not understand that the Immigration Bureau had been a failure, and while he should vote for the substitute of Wr. Waelder, he would rather vote for the article establishing the Immigration Bureau in the Constitution of 1869. By a policy of immigration, we had increased, since the year 1860, from 216,000 to nearly a million and a half of people. He would quote to them the Democratic platform—as he had done some years ago—to show that the party was pledged to the work of increasing immigration to the State. He also quoted the last message of Governor Coke to the Fourteenth Legislature and said: "I heartily concur in every word of that message. While I consider him one of the best Governors that ever occupied the gubernatorial chair, I also consider him the most far-seeing statesman of modern days. He recommended to the Legislature that they should make adequate provisions to encourage immigration and to their shame be it said they failed to do their duty, but they showed a narrow spirit and failed to come up to their duty in this respect." He reflected on the Legislature for their pretended economy when they converted two small counties into judicial districts, at an annual cost of $8,000 for each district for the salary of the judge and district attorney, and yet devoted only some $7,000 to encourage immigration.

He said he hoped he would not be accused of bringing the Governor to bolster up his ideas of immigration. He differed with the gentleman from Williamson, that increasing population would prevent their children from successful competition with others. If his, Mr. McCormick's, children were not able to compete with other children let them go to the wall. Let them invite all classes to settle here and they would make Texas what God intended her to be, a great, glorious, and prosperous State.

Mr. Wright said it was the wisdom of statesmanship to examine whether it was to the interest of Texas to encourage immigration. While many members were desirous of encouraging immigration, they were opposed to an immigration bureau being incorporated into the Constitution. They were opposed to paying the way of people to Texas. While the Democratic party was in favor of honest immigration and protecting immigrants in the enjoyment of their free institutions, the Democratic party had never favored the payment of large sums of money to bring immigrants to the country.

MR. KING said the substitute did not contemplate the payment of money for the purpose of bringing immigrants to Texas.

MR. WRIGHT said he understood that, but was merely following up the line of argument the supporters of the bureau had adopted. If they would limit it and say it should not cost more than $5,000 annually, he was willing that it should be done. But to open the door to an unlimited extent he was not willing, and the Democratic party was not committed to any such doctrine. Mr. McCormick had said that the Governor was one of the best Governors they had ever had in the State. That might be questioned. For one, he was not prepared to say, nor did he say, that he had been the best Governor Texas had ever had. While his message might have said that he was in favor of immigration, still he was not qualified to speak for the Democratic party, nor to tie them down to what he considered should be the principles of the party. If he supposed that it owing to him as an individual that the party was successful, he was mistaken. The fact was, the Republican party was so low and so demoralized that a stump with an old pair of breeches on it would have defeated it, and hence so far as committing the Democratic party to him, he had no right to do it. In his message he spoke as Governor of the people and not as the Governor of a party, for when he got into the gubernatorial chair he became the chief magistrate of the whole people and of no particular party. The Governor had been lugged into this thing to whip men into the party traces, but it had no effect on him.

MR. MCCORMICK said he did not intend to lug the Governor in to influence any gentleman.

MR. WRIGHT said he was glad of it. They were there to make a Constitution for the State of Texas and no one else. If it was necessary to have a bureau of agriculture, all right, but he was opposed to opening the doors to unlimited expenditure and for gentlemen to wander over Europe, smoking cigars and looking big, or for paying a horde of supernumeraries in our own country and opening a very

Pandora's box of ills. He disliked to have to say what he had said unless in explanation of the reasons controlling his vote.

GENERAL WHITFIELD moved to amend the substitute by striking out line 68 and inserting, "that the Legislature shall never make any appropriations to defray the expense of immigrants to this State, and provided further that said bureau shall not cost exceeding $5,000 per year." He supported his amendment with an energetic speech. He spoke in high praise of the German element, their industry and prosperity, and said that they were more opposed to being taxed to bring immigrants to the State than any other class he had talked to.

MR. MCCORMICK said the gentleman from Lamar (Mr. Wright) had seen proper to say that a pair of old breeches on a stump would have defeated the Radical party when Mr. Coke was a candidate for Governor, but he could say this much without fear of contradiction, that a pair of gentleman's breeches from Lamar with himself in them, would not have defeated the Radical party of Texas.

MR. WEAVER spoke next in opposition to the substitute.[79]

He said: "Mr. President, I know that there is no hostility to, or prejudice against, foreign immigration among the people whom I have the honor in part to represent. Two counties of that district are frontier counties, sparsely settled, and they especially invite, and will cordially welcome immigration—as will the people of the whole district—and I think this is the desire of the liberal spirited people of Texas.

"It is not foreign immigration they oppose—it is the institution created by the Constitution of 1869, known as the Bureau of Immigration, with its superintendent at a salary of $2,500 per year, and his four staff officers (supernumeraries) at $3,500 per annum—$16,500, with the Legislature's appropriations—to which the people object. It is the fact that the people are called upon to support this bureau out of their pockets, and to hire immigrants to come here, that makes the people ignore this bureau. Why, sir, the whole civil history is built upon immigration. I point you to her laws—colonial, donations, bounty, and preëmption, with her preëmption law still recognized by this Convention as a part of the Constitution we are framing—and there never was a day when the people of Texas were not ready with open arms to welcome immigrants without reference to their nationality; while the Government has said to the world: "Homes for the homeless" here without price, from leagues to quarter sections of land. Why, sir, from the day that Lafayette and Pulaski came among us, and the brave old German De Kalb poured out his patriotic blood on the field of Camden, to this hour, the policy and the generous spirit of the nation has been to invite emigrants to our shores. The national doors have been wide open to welcome people from Great Britain and continental Europe of all nationalities, who, seeking homes and protection, have fled from the shadows of despotism to the sunlight of constitutional government—to a land of democratic brotherhood.

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[79] Mr. Weaver's speech was printed in full by the *State Gazette* (Austin), October 24, 1875.

"It is true, sir, that a party sprang up from the ruins of the noble old Whig party, and taking hold of religious bigotry, aided by demagogues and Protestant preachers (who would have illustrated the beautiful character of Jesus more appropriately if they had tried to preach His doctrine and have 'rendered unto Caesar the things that are Caesar's,' and have led a political crusade against Catholicism alone); that party appealing to religious intolerance, and the inherent love of country and nativity in all men's bosoms, rose for a brief time, into importance in our political history, but while the insidious serpent know-nothingism was creeping into the cradle of liberty, Democracy—Stephen A. Douglass seized it by the throat, and like another infant Hercules, throttled it in Philadelphia, leaving Henry A. Wise to crush the last stroke of vitality in its tail in Virginia. But we are told today, that this bureau of immigration is a part of the Democratic platform, and my esteemed friend from Colorado, Mr. McCormick, who carries the Democratic platform in his bosom like a lover does his sweetheart's picture, and I presume, has it for a frontispiece on the fly-leaf of his family Bible, quotes Governor Coke's argument in his able annual message in favor of this institution. I, for one, have a high regard for the present executive. I am willing to concede to Governor Coke eminent statesmanship, sound practical views, and an able, judicial mind, but I am like the man in the Wisconsin debating society, who insisted that General Henry Dodge fought the battle of New Orleans, and referred to *Plutarch's Lives* of the signers of the Declaration of Independence, and Froude's *History of the Black Hawk War* to prove it. I have a lingering impression that Sam Houston was our best Governor.

"Mr. President, this is no party question, and if it were, this is no place for mere partisan views. Our duty demands broader views than the consideration of any political platform or principle. Gentlemen are continually talking about the Democratic platform. Some of them seem to come here with it bound around them like the green withs around Samson's arms. I am a Democrat, always have been, learned it in the cradle when my lullaby was the campaign songs of Van Buren and Tippecanoe; but if I were fettered with the Democratic platform upon a question of what I deemed right, and due to the people, I would pray for Samsonian strength to snap it asunder. I repeat this is *no partisan issue.* The people simply don't want to pay immigrats to come here. They want them to come to our land for love of freedom, and to better their condition by improving our rich, uncultivated domain. I think I appreciate the able gentleman from San Antonio, Mr. Waelder, and the worthy German constituents whom he represents, in common with the native Americans, who, as a tribute to his high character, learning, and ability, have sent him here.

"I have stood in my boyhood on the banks of that beautiful river, the Guadalupe, watching its green waters wash the shores of that fine city, which German enterprise, industry, and intelligence have transformed into a garden of Eden beauty, making its valley for miles blush with fruits and flowers, and I thought of the days when the lands west of the Colorado were estimated as little more than a sterile waste, on which the rains of Heaven rarely fell; and I may say the same of Yorktown, Fredericksburg, and other German towns and settlements, that show what foreign immigration has done by the power of machinery and agricultural industries, to bring water from the rocks, with the rise of science, and change into fruitful fields and gardens the waste places and wilderness beauty of Texas. And I think, sir, that these people came here because they love our laws and our lands, and not under the auspices of an immigration bureau. They did not wait for us to send for them and pay their fare. They gladly paid their own passage to get here.

"Sir, that undefinable word used the other day by Mr. Dohoney, and for which my friend Mr. Martin, of Navarro, sought in vain an etemological history of, 'the riff-raff,' I have since learned from a *seance* with Noah Webster, means the pauper population imported by the *deceased* immigration bureau into this State. I say deceased, for the Fourteenth Legislature killed it with an abortion appropriation, and we are now preaching its funeral, and will soon bury it out of sight, for its smell is offensive. But again we are told that it will advertise Texas. *Advertise Texas!* Why, sir, her name, fame, and territory are parts of the world's greatest history; her natural resources, her fertility, her broad, rich prairies, her magnificent forests of all the useful trees of the temperate zone, her wonderful and various agricultural resources, her mountains of iron, coal, granite, marble, silver, gold, copper, and gypsum, her splendid rivers, running from these mountains and flashing across her bosom to the sea, are known wherever civilization extends or American liberty has ever been heard of. Why, sir, you might as well talk of sending a dispatch to China, that gold has been discovered in California. It is known in all Christian lands, and Stanley is telling it today, perhaps, in Central Africa that Texas has more wealth in her bosom than a hundred Californias.

"The distinguished gentleman, whose name has advertised Texas abroad, need have no fears that she will not be heard from in the 'fatherland,' if we abolish this bureau. These immigrants, who come from a nation of scholars world-renowned for science, literature, and inventions, bring with them the educated mind and genius of their mother country; and thousands of newspapers, *Texas Almanacs*, and multiplied thousands of letters, land agents' circulars, and other documents annually reach their far-off friends, inviting them to share our hospitality, prosperity, and free government. They go back to their old homes and say to their kindred and friends, in the words of the Bible, 'Behold I journey to a country of which the Lord thy God hath said, I will give it to thee. Go with us and we will do thee good all the days of thy life.' And we stand in the Gulf shores and say, welcome to this Canaan of fair and happy lands. We say that millions of hospitable homes and rich acres are waiting for your hands without price when you come, *but not one cent to hire you to do so.*

"One word in reply to my friend from Colorado and I am done. He says if we abolish this bureau it will be the last straw on the camel's back, and the Constitution will be defeated. Well, sir, I do not believe the members of this body will allow the ghost of a possible defeated Constitution to scare them until, like himself they 'strain at a gnat and swallow a camel.' "

MR. ABERNATHY moved the previous question, which was sustained.

General Whitfield's amendment was lost by a vote of 18 to 62.

Mr. Waelder's substitute, as amended by Judge Reagan, was lost by a vote of 33 to 47.

## THIRTY-NINTH DAY

### WEDNESDAY, OCTOBER 20, 1875[80]

MR. RUSSELL, of Wood, presented a minority report of the article on revenue and taxation. He said the minority could not approve of that part of the majority report which permitted non-residents to pay their taxes at the Comptroller's Office, or at any other place than in the county in which their lands was situated.

MR. STOCKDALE moved to reconsider the vote adopting the resolution prohibiting the establishment of a bureau of immigration. The motion was argued at length, and was finally made the special order for the next Wednesday.

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[80] The proceedings for this day were taken from the *State Gazette* (Austin), October 21, 1875.

The article on railroads was taken up and passed to its third reading. An amendment was passed, providing that railroads running within three miles of a county seat must run through the county seat. A clause was also passed, allowing any portion of the real or personal property of a railroad company to be levied upon under execution.

The remainder of the session was consumed with reports of the Judiciary Committee. Four were presented.

## FORTIETH DAY

### THURSDAY, OCTOBER 21, 1875[81]

### *Railroad Article Reconsidered*

MR. RUSSELL, of Wood, moved to reconsider the vote engrossing the railroad article. The motion carried.

COLONEL CRAWFORD moved as a substitute for Section 6, "No railroad company organized under the laws of this State shall consolidate by private or judicial sale, or otherwise, with any railroad company organized under the laws of any other state or of the United States." He said he thought the policy of the State should require that her railroad companies be kept exclusively under her own control.

MR. STOCKDALE said the Legislature could not create a foreign corporation, but Congress had chartered railroads running through several states, and he would like to be informed how they could prevent it. He thought the object of building railroads was to go to the sea, and failing that, to connect with other roads in the interest of commerce. As Judge Black said in a celebrated Pennsylvania case, towns on the border ought not to be permitted to compel railroads to dump their freight for the benefit of local communities. The idea that we were to break lines of transportation, not consolidate with other roads, was preposterous. It mattered not how much companies consolidated according to the Supreme Court of the United States, the company was like a citizen and could be tried where its locus was. Let us have through lines of communication, bridge at Red River, and not be compelled to stop and break the transportation of the commerce of the nation to and from our State. He hoped they should not go quite wild. To have cheap rates, where there was no local competition, freight in bulk ought not to be stopped until it reached its destination. He hoped they would not put a ring of fire around their State in the manner suggested. The Texas & Pacific was the only consolidated road in the State.

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[81] The proceedings for this day were taken from the *State Gazette* (Austin), October 22, 1875.

COLONEL CRAWFORD said his proposition did not contemplate the breaking of lines of communication, but to prevent consolidation so as to keep them within the jurisdiction of State courts. He reminded them of a case in Cass County where a person was compelled to accept a ruinous compromise with a railroad company, having no protection in the State courts and being unable to carry the case through the Federal courts. He denied that competing lines gave relief and referred to the railroad system of the West. In case one company was unable to buy up the other, both would join in oppressive tariffs.

MR. MILLS moved the previous question and was sustained.

Colonel Crawford's substitute was adopted by a vote of 35 to 28.

The article was then engrossed.

### *School Lands on Third Reading*

MR. DARNELL moved to substitute after the word "settlers" in line 11, "said lands shall be sold on a credit of not less than ten years, bearing interest at the rate of not more than 10 per cent per annum— the proceeds to be held by such counties alone as a trust for the benefit of the State or of the United States." He said he thought that if the county courts had the right to sell these lands at any time it might be dangerous and operate injuriously to the settlers in their anxiety to obtain funds for schools.

GENERAL WHITFIELD said he would support the substitute.

MR. WEAVER said he was of a similar opinion. He did not want the settlers left at the mercy of land-sharks, who were heartless and soulless and had no more sympathy for a poor widow than an alligator for a baby.

MR. GAITHER moved to amend by adding, "provided that the payment of one-fifth of the purchase money be required on all sales of said lands."

JUDGE REAGAN said he joined in the opinion of the three first named gentlemen that the interest of the actual settlers ought to be considered and they ought to have the privilege of remaining on the lands. The Legislature in all its current action had looked not only to the sale of these lands but to securing their purchase to those who had settled them.

MR. MCKINNEY said he favored Mr. Gaither's amendment.

MR. SCOTT moved to amend by inserting in line 6, "to actual settlers on ten years credit with 10 per cent interest."

MR. ROBERTSON, of Bell, moved to add "provided it may be paid by the purchaser at any time and the amount invested in State or United States bonds."

Mr. Scott accepted the amendment.

MR. ALLISON insisted that if "actual settlers" were specified exclusively it would prevent their being sold to any other parties under any other circumstances.

MR. WADE said he was in favor of trusting the county courts.

MR. CHAMBERS said that in view of so many conflicting opinions he would move to refer the whole matter to a select committee of five.

JUDGE REAGAN submitted an amendment to be added after line 11: "said lands shall be sold on a credit and payment shall be made in ten equal installments with interest on such sum as may be due at the rate of 8 per cent per annum, secured by a lien on such land."

MR. NUNN said he thought the counties had the paramount right and those of settlers were merely subsidiary, and while disclaiming any injustice to the latter, thought the counties ought to realize in the interest of the school fund.

MR. JOHNSON, of Franklin, said he was in favor of the fullest justice to the settlers.

MR. GAITHER said it was evident that the Convention would not go very far in the way of free schools, and thought that something should be done to realize something at once, say one-fifth, as proposed in his amendment.

JUDGE BALLINGER said he thought the county courts ought to be entrusted with this matter. They could be elected by the people and he did not think they would be composed of a set of rascals, who would combine with speculators. Surely on ten years credit to the highest bidder was not a wise investment. In timbered lands the timber would be cut, and under any circumstances it would be a ruinous policy and would cost more in fees to collect than it was worth. Settlers were protected by the refusal of the land and in their improvements as they ought to be. Offer it on ten years credit and they would convert the whole State into speculators.

MR. WRIGHT said he endorsed the remarks of Judge Ballinger. He opposed converting the Convention into a guardian of the counties, for they had the titles to these lands, and why not permit them to manage their own affairs? It ought to be left to the special and discreet management of the county courts. It might be that the lands would increase in value. It was for them to decide, and why should the Convention interfere with their rights? The settler ought not to expect better terms than were offered in the report of the committee.

MR. ROBERT LACY, of Leon, said those grants were made to the counties and it was their property under the Texas Republic, and they ought to be allowed to control them. He could not see who had a greater interest in the welfare of the school lands than the county courts.

Upon the motion of Mr. Fleming the pending amendment was tabled.

### *Bill of Rights on the Third Reading*

MR. STOCKDALE proposed the following as a substitute for Section 12: "The writ of habeas corpus is a writ of right; the right to have this writ from the proper court or judge, shall never be suspended except by act of the Legislature; the Legislature shall never suspend this right except there be such hostile invasion of the State by organized arm force as shall put in peril the safety of the State, or such rebellion within the State as shall make it necessary in order to preserve the authority of the State Government, and only in those cases in reference to arrest upon charges made upon oath of treason, conspiracy to commit treason, or some other offense defined by law, against the authority of the Government, nor shall any person be held in arrest upon a charge of offense against the authority of the Government, except under a judicial warrant; when the writ shall be suspended in accordance with the foregoing conditions, then a person under arrest under judicial warrant, may be held in a place of safety and removed, as circumstances may require, by the executive or under his authority, and shall be so safely held without the benefit of trial, bail, or main force, until the act suspending the right shall be repealed or expire by its own limitation; every suspension of the right to the writ of habeas corpus by the act of the Legislature shall be for a time certain not to exceed —— months."

MR. STOCKDALE said in support of the substitute that it would be well to regulate the suspension of the writ, as it was sure to be practically suspended when necessary, whether prohibited in the Constitution or not. His substitute would prevent the suspension except by the highest legislative authority in the State, and would regulate the manner of its suspension to the very nature of the case.

MR. LYNCH said he opposed the substitute, and referred to the operation of the writ in England, which could not be suspended by the Queen herself, and only by the Parliament.

MR. KING said that he would admit that during the war the laws were always silent, and that guarantees on paper were worth nothing. But they were making a Constitution for a time of peace. The substitute seemed to him to be paradoxical. It provided for the disposition of a person in time of war when no law existed. He was willing that there should be no suspension of the writ except by act of the Legislature. He regarded the amendment as an innovation upon similar clauses in other Constitutions, and thought it went further than was necessary.

MR. DOHONEY said he regarded the liberty of the citizen as a natural right and one that should be zealously guarded and never suspended by any government, civil or military. He said he was opposed to the substitute.

JUDGE REAGAN said he thought there must be a mistake about "natural rights" being capable of being suspended by a political government. He did not understand what was meant by the term.

MR. WRIGHT asked what was the meaning of civil liberty if it was not a curtailment of natural rights?

JUDGE REAGAN said he did not understand what was meant by natural rights.

MR. WRIGHT said he was not surprised at that but could not furnish the gentleman with capacity.

**JUDGE REAGAN** said they talked about natural rights before they were formed into a political society, and then they talked of civil rights, political rights, and civil liberty. He did not agree with Mr. King that they could make a government by law and not prescribe by law for a condition of things when there should be no law to restrain the political or military powers of the State. If they were always to have a condition of peace then it would be right that the writ should never be suspended. He was willing to take the usual words suggested by Mr. King, but would support the substitute that recognized the fact and made it imperative that the writ should never be suspended except by act of the Legislature.

**MR. WRIGHT** said that his colleague (Mr. Dohoney) had laid down the proposition that liberty was a personal right, and the writ of *habeas corpus* was the right to protect that natural right, therefore it was called the writ of right. It is the right to preserve the liberty of the citizen, a natural right as defined and understood. The gentleman from Anderson had said he did not understand it. He was not surprised at that. What was a natural right? It was the right of personal liberty. It was the right surrendered by the citizen only so far as was necessary for the public good and the benefit of the Government. Of what advantage was it to a man to surrender his natural right if he received no benefit therefrom, such as law and order. The original section provided that it should never be taken away from him, except by due course of the laws of the land, and here it was that the writ of right came in protecting him in his natural right of liberty. He maintained that the Legislature should not have the power to suspend that writ, no matter what the circumstances, and that a man's liberty should not be taken except by due course of law. He was opposed to putting in the Constitution the power, even to the Legislature, to suspend the writ of habeas corpus. History repeated itself, and they could not tell what legislatures might do in the future when they obtained control of those halls, but they knew what they had done in the past ten years. He reminded delegates of General Jackson's surrender to the court of Judge Hall, thus recognizing the fact that the military must always be subordinate to the civil authority. If suspended under certain exigencies, then he wanted twelve honest men to exonerate the offender if they could, but he was not willing to leave it to the Legislature to interfere with this right, the natural right of the citizen not to be restrained in his personal liberty, without due course of law. He supposed the gentleman from Anderson understood what his colleague meant now by natural right.

MR. FLOURNOY defined the writ of habeas corpus, and the meaning attached to it in England from the time of the barons down to the present time. It was the same today in that country and in this. It was the right of a citizen of Texas when arrested in peace and war, to demand of the courts of the country, not to discharge him, but to say whether he was properly held or not. The Bill of Rights said that a man shall be bailable, except in capital cases, where the proof is evident. Treason was a capital offense, and if the proof was there he should be held, whether in time of peace or war. He regarded the clause as it stood as the embodiment of the true idea of liberty. It merely told a citizen that when arrested he could appeal to the courts. When would a case arise that a citizen did not want to appeal to the courts of his country? In peace? Certainly not. If in war, why then, as Cicero told us, 'in the midst of war all laws were silent,' and this no more than the rest. We were not preparing for a condition of war, human foresight could not do that. If it came they must meet it. Self preservation was the highest law of nature, but they should not, under an impression of possible danger, authorize any power to place the citizen in duress and hold him there in defiance of the laws of the country. As long as they had a judicial tribunal it should be appealed to. If he were guilty let him suffer; don't bail him. If he were there through the connivance of power, the result of prejudice, or of false evidence, let him be restored to his liberty, in his observation, when the suspension of the writ did not work great wrong. It might be from the best of motives, to prevent danger, the clash of cymbals and the tocsin of war, but the result was the same. He did not care if Missouri had adopted this proposition. It was the essence of liberty in England and could only be suspended by Parliament. That was a supreme power, which made constitutions for the whole land. He could not foresee any condition of things when it should not be lawful for a citizen of Texas to appeal to the courts of his country to say whether or not he was guilty of crime.

**MR. DEMORSE** said that the little clause there reported contained the whole charter of human liberty capable of expression on paper, and he trusted that body would not change it in one word or sign. If personal liberty was not a natural right under organized government as well as in unorganized society he could not conceive what a natural right was. He could not conceive in case of war necessity in a critical emergency when a military commander might consider it necessary to suspend the writ of habeas corpus. If he were in command and disregarded it, it would be under a sense of patriotic necessity, and holding himself amenable to the law and public opinion thereafter however much he might disregard it in the present. No part of the clause ought to be changed. It was the only security remaining for the liberty of the citizen, and he hoped never again to see upon the continent of America such action as was taken during Mr. Lincoln's administration, when men were picked up from the streets and immured in dungeons without knowledge of the offense with which they were charged, and continued in prison without intimation to their families or their friends as to their whereabouts or the crime until released at the pleasure of the authorities. He was opposed to the alteration or omission of a word and hoped the substitute would not be adopted.

**MR. DILLARD** moved to table the substitute and it was tabled.

**JUDGE BALLINGER** moved to insert before the word "regulate," the words "prohibited and," in Section 23. It had reference to the bearing of arms.

**MR. BROWN** said that, after what he had seen in the last fifteen years, he would not prohibit the bearing of arms, but would leave it with the Legislature to regulate.

**MR. WAELDER** said he thought it led to more crime than any other cause did.

The amendment was tabled.

**MR. STOCKDALE** moved to substitute for Section 28: "No law or laws of this State shall be suspended except by the Legislature, which may only suspend in the same manner as laws are made and repealed; whenever a law is suspended, it shall be for a certain time."

**MR. STOCKDALE** said he did that in order that the Legislature might not have the power to suspend the laws at one fell swoop. Since they had refused to regulate the suspension of the writ of habeas corpus, he hoped the necessity of preventing the suspension of all law would be seen.

The substitute was lost by a vote of 26 to 34.

**COLONEL CRAWFORD** moved to substitute the original clause as reported by the committee.

**MR. WEAVER** combatted the idea of "independence" as applied to the states as apart from the Federal Constitution. He said he had fought four years over that little question.

**MR. DEMORSE** said he hoped that the word "subject" would not go into the Constitution. He did not object to Mr. King's amendment, but the word "subject" did not belong to the Constitution of the State of Texas, whether subordinate to the United States or not.

**MR. FERRIS** held that it was an appropriate word in this instance as applied to the Constitution of the United States. Missouri had adopted it, and why not Texas? He said they were all subject to the Federal Constitution, which was the law of the land.

Colonel Crawford's substitute was lost and the article was then passed by a vote of 66 to 9.

## FORTY-FIRST DAY

### FRIDAY, OCTOBER 22, 1875[82]

### *Revenue and Taxation*

(Mr. Brown in the Chair.)

**JUDGE REAGAN** offered a substitute for the entire article. It declared taxation should be equal and uniform. All property should be taxed in proportion to its value, except that made exempt by a two-thirds vote of the Legislature. It taxed all occupations, trades and professions—occupations not to be construed as applying to agricultural and mechanical pursuits.

**MR. NUGENT** moved to table.

**JUDGE REAGAN** said things had come to this pass, that a substitute taken bodily from the Constitution of 1845 was not thought worthy of being listened to. His substitute left the Legislature entirely free to act.

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[82] The proceedings for this day were taken from the *State Gazette* (Austin), October 23, 1875.

MR. NUGENT said members conceived the Constitution of 1845 so sanctified in wisdom that no succeeding age could make any possible improvement. He did not give the men of that time the wisdom of prophets. They were being carried away with the delirium tremens of progress, so far that the property of a powerful railroad corporation had been exempted for twenty-five years. He considered the proposition as utterly damnable, and they ought at once and forever to put their seal of condemnation upon it.

JUDGE REAGAN said he had not dreamed of railroads in connection with his substitute.

MR. NUGENT said the effect was the same.

JUDGE REAGAN said he meant merely to exclude school and church property in some instances, where the Legislature might make it right to do so.

MR. NUGENT said he was opposed to exempting anything except household furniture to the extent of $250, and he was utterly opposed to giving the Legislature power to exempt anything and everything by a two-thirds vote.

MR. DEMORSE said that on the article of taxation began the contest between corporate interests and the masses of the people and the rights of those masses. The parties were aligned right there, and the question was whether the people were properly represented, and whether corporate interests should control the Convention as they had controlled Legislatures for the past three or four years. The committee had carefully considered every proposition on taxation, and had endeavored to reach every class that had thitherto avoided taxation. The article was made purposely lengthy in order to reach all cases and to define all the principles governing taxation and define them justly, wronging nobody, but representing all classes and all interests in the State. They proposed to make them all uniform and to suffer no variation. No man had greater respect for Rusk, Henderson, Hemphill and others who framed the Constitution of 1845 than he did. They were his friends and he had always sustained them. No man need appeal to him in support of any proposition which they had considered and matured, but it might be supposed when they made that Constitution that they knew as well as members of the Convention that it did not contain all the wisdom in the world, and their article showed that they had not carefully defined that as it is now desirable to define, and for this reason, that there was then no necessity for objects which had arisen since that time, and to provide for evils growing out of changed conditions which experience had demonstrated the necessity for; the report of the committee was understood to have the concurrence of every member of it, except on one proposition, and that was the proposal that taxes assessed on lands should be paid in the county where situated, or whether non-resident should have the privilege of paying it in the county of his residence, or to the Comptroller. Mr. Fleming had put in a report embodying the principles of the majority report, but not so full and explicit, and abbreviated it by leaving out clauses deemed important by the committee. He contended that the very fullness and explicitness of the majority report was proper for consideration. If necessary, some parts might be excluded and its length abridged, but if there was a single clause or a single class mentioned not necessary to the interests of the people, and the preservation of the interest of the State, he was not aware of it.

MR. RUSSELL, of Harrison, said he was opposed to the substitute because it allowed the Legislature to tax classes of persons who ought not to be taxed, and gave to the Legislature powers which ought to be exercised by the Convention. He saw no reason for putting into the Constitution the words, "that taxation should be equal and uniform" and denying it in the next line. If they did not adopt the majority report he hoped they would accept that of Mr. Fleming.

MR. FLEMING opposed the substitute. He had no objection to the majority report and his substitute had only sought to condense the principles presented in that document. He spoke of a case in Brown County, where a gentleman who did not reside a great distance from Austin, had paid $24 for land which his immediate successor paid $428. There were enough taxes owing to pay off the whole State debt. He had heard it said that Mr. Reagan had made some of the ablest mistakes ever made in political life, but he hoped he would not succeed in foisting any of his mistakes on the Convention.

MR. WEAVER said he was opposed to the majority report because of its length. He would vote for the substitute as amended.

PRESIDENT PICKETT said that the substitute left it open to the Legislature to act as they thought exigencies might permit, and gave them unlimited power and authority. He objected to the two-thirds proposition in the substitute, and argued that they were not framing laws against probabilities but against possibilities. He spoke of the subsidy of twelve millions to two railroad companies, which had not been dreamed of by the framers of the Constitution of 1845.

MR. MCKINNEY, of Walker, said he would vote for the majority report, but liked Mr. Fleming's better, because it was briefer.

MR. STOCKDALE said he objected to Section 1 of the report, because it claimed that taxation should be equal and uniform, and yet gave an amplitude of power to the Legislature to do otherwise, which had never before been given by any Constitution. He thought the construction he put upon it would also be put upon it by the courts. He objected to the second clause because it abolished an occupation tax, which brought from four to five hundred thousand dollars to the State, and because it was proposed to make up that amount by taxing occupations that were odious, thus making the Legislature a judge of morality. The provision of the old clause in the Constitution of 1845 was that property should be taxed according to its value, but the third clause of the majority report proposed an ad valorem tax as the rule, and then departed from it by proposing to tax incomes. If it was intended as a limitation on the Legislature, it was a failure. For these and other reasons, which he enumerated, he would support the substitute of Judge Reagan.

MR. WAELDER spoke in favor of the substitute. He said his amendment provided for county boards of appraisers; taxes to be paid in the counties or to the Comptroller; that it also provided for the sale of property for unpaid taxes, and vested the title in the purchaser. It provided further that taxation should not exceed 50 cents on the $100. Judge Reagan's substitute, with his (Mr. Waelder's) amendments was his choice, but if that failed he would vote for Mr. Fleming's report.

JUDGE REAGAN said that theretofore there had been no separate article on revenue and taxation in the Texas Constitution. He was not willing to trust questions of morality and ethics to the Legislature. Revenue should be raised mainly from sources through which money passed. He explained his position with reference to other questions connected with the report. He had offered his substitute as a means of escaping from the labyrinth into which the majority report would lead them, and as a basis upon which an article could be built.

MR. GRAVES moved to lay the substitute and amendments upon the table. The Convention refused by a vote of 34 to 39.

MR. DEMORSE replied to the arguments respecting the length of the majority report. It was not so diffusive as Mr. Weaver's simple resolution on woman suffrage, or the simple amendment of Mr. Stockdale on the Bill of Rights, which was as long as two whole sections of the article submitted by the majority. His friend from Anderson had said there were great mistakes in the report, but the gentleman himself had made such huge mistakes in statesmanship that he should be pardoned if he did not follow him in them. The gentleman from Comanche had condensed the report of the majority, but it was at the expense of the restrictive clauses. All of the objections which had been opposed had been inserted for the protection of the people. His friend Mr. Waelder had objected to the length of the report when he had been guilty of the same fault himself. Every other report from a standing committee had been respectfully considered, amended clause by clause, substituted or rejected, and why should this report not receive the same fair treatment? He knew that a general provision could be made much briefer, and he would have no difficulty in drafting one himself. The report had not been made with the expectation that it would meet with acceptance at the hands of every member of the Convention. It was known that it would meet with a spirited opposition, and it was known where the opposition would come from. The report would be found to do injustice to no one, but did justice to the whole people. For those reasons he asked that the report be respectfully considered and not thrust aside because it clashed with special interests.

MR. WADE spoke in favor of the minority report.

MR. NUGENT opposed the the substitute and supported the majority report, but was willing, if opinion could not be harmonized, to refer back or refer to a special committee.

MR. MCLEAN said he thought the report had been treated very cavalierly. It should have been taken up clause by clause and either amended, substituted, or rejected; it should not have been attacked in bulk. There were clauses to which he objected in the majority report, and which he would move to amend at the proper time. He had as much respect for the Constitution of 1845 as anyone, but Texas was in her infancy then, and what was required was a Constitution for her manhood. They might make a piece of literary mosaic, which would look beautiful, but which would be regarded by the people as a conglomerate, impracticable, and useless piece of literature, that would be set aside. Let them not be frightened by the length of the article. Let them look to its merits, which had scarcely been scanned by any gentleman who had spoken in opposition to it.

MR. WEAVER said he intended no reflection on Mr. DeMorse. He made an exception to its length, and if it had come as a law from the Fifteenth Legislature it would have been all right. He said he pleaded guilty to the length of his resolution on woman suffrage, but if there was anything upon which a man had a right to spread himself, it was that subject. He did so, too, because it was in advance of the times, and was with a view to the wants of the twentieth century.

MR. STOCKDALE said that when yesterday he had introduced his lengthy resolution to the Bill of Rights he had not considered himself personally offended at the criticism thereon. He denied that there was a disposition to treat this report unfairly or with a want of due respect. He was a member of the committee, and had not been consulted as to whether it met the views of his constituency, and he had a right to object to it if he thought it was necessary. He did so in no unfriendly spirit. Mr. DeMorse had said, however, that the opposition had come from where he expected it, from those who represented other interests than those of the people. He did not pretend to represent any other interests than those of his own constituency. They knew his public acts for the last twenty-five years. These acts had been open and above board. They had a full knowledge of all his relations to them, and he represented them alone. When gentlemen imagined that he was capable of other than the highest of motives of action, he was conscious that his integrity and motives were as high above theirs as it was possible to be.

MR. DEMORSE denied that he had made any personal imputation against any one. The last gentleman had said that he represented his constituency alone. The majority report was aimed to represent the whole people of Texas. That was the difference between them.

Mr. Waelder's amendment was lost.

**MR. DOHONEY** proposed to amend the substitute as follows: "Ad valorem taxation shall never exceed one-half of 1 per cent, and no higher tax than the State tax shall ever be levied by any town or city; provided that in cities of over 10,000 inhabitants a higher rate may be levied in taxes in organized counties, to be paid in said counties, but in unorganized counties to be assessed and collected in such manner as the Legislature may prescribe."

**JUDGE REAGAN** accepted the amendment.

**MR. FLEMING** presented his minority report as a substitute to Judge Reagan's substitute and the majority report.

**MR. RUSSELL**, of Harrison, spoke in favor of the majority report, and explained his position as a member of the committee.

**MR. FLEMING'S** substitute was adopted by a vote of 58 to 16.

## FORTY-SECOND DAY

### SATURDAY, OCTOBER 23, 1875[83]

**MR. COOK**, of Gonzales, offered a resolution authorizing the Committee on Printing and Contingent Expenses to audit and approve the claim of the *State Gazette* for supplying 100 copies of the paper for the first eight days of the session. He spoke in favor of the resolution. He regarded it as a simple act of justice. No bill had been presented, and it was left with the Convention.

**MR. RENTFRO** opposed the resolution. He thought the papers should be paid for by individual members of the Convention.

**MR. RUSSELL**, of Harrison, spoke in favor of the resolution.

**MR. MILLS** favored the resolution.

**GENERAL WHITFIELD** saw no need of the resolution. It was customary for papers to be supplied to legislative bodies until some provision was made for the public printing.

**MR. WEAVER** said he thought it would be only an act of simple justice. He spoke of the fact that though the *Gazette* had been refused the public printing, it was the only leading paper in the State which had defended the Convention and the interests of the people from the attacks made upon them. The papers had been sent to their constituents, and the people had therefore received the benefit from them.

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[83] The proceedings for this day were taken from the *State Gazette* (Austin), October 24, 1875.

MR. BROWN said it was well known that during the time specified the *Gazette* had furnished the only full and complete reports of the work of the Convention.

MR. BLASSINGAME moved to amend by including the *Galveston News, Houston Telegraph,* and other papers, but his amendment was lost.

The original resolution carried by a vote of 53 to 23.

### *Revenue and Taxation*

MR. DOHONEY moved to amend Section 1 of Mr. Fleming's substitute by adding, "the Legislature shall have power to impose ad valorem, occupation, income, and poll taxes."

MR. RUSSELL, of Harrison, moved to table the amendment.

The Convention refused to table.

MR. RUSSELL, of Wood, said he regarded occupation taxes as wrong in principle, in some instances as a tax on brains, and sometimes as an unequal tax. He thought the ad valorem system was the only system which should be adopted, but he was willing to accept the occupation tax as a compromise, provided it should be reduced one-third every year for three years after the adoption of the Constitution.

MR. DOHONEY admitted that an occupation tax worked unequally, and said that if an income tax were to be adopted it would apply, he thought, to all citizens. He desired to leave the question for the Legislature to act upon as it thought best.

MR. JOHNSON, of Franklin, defended the occupation tax.

MR. CLINE denounced the occupation tax as wrong in principle, and a tax on brains. He opposed Mr. Dohoney's amendment. He said the Legislature had all power to tax. He thought the Legislature ought to be restricted from laying occupation taxes. It was unequal, and operated very severely on those struggling upward to positions in life.

MR. ALLISON said the occupation tax amounted to $300,000 annually, and, if strictly collected, would amount to half a million.

It was thought that their policy of retrenchment would amply make up that deficiency, but that was altogether experimental. The tax had been so long in operation that it was generally acquiesced in, and it would be little felt. Unless they provided for revenue in some other way, he did not see that it would be safe to remit it.

MR. FLEMING said he opposed the amendment. He was opposed to all occupation taxes, and especially on agriculture and mechanics. If they would confine their occupation taxes to lawyers, doctors, and professional men, he would be willing to vote for it.

MR. SANSOM proposed a substitute for the whole matter. It left the Legislature free to tax, but fixed the exemption at $250 and no more.

MR. FLEMING moved to strike out of Section 4, "and in their gross earnings, their net earnings, their franchises and their capital stock."

MR. DOHONEY substituted for his amendment the following: "The Legislature shall have power to impose an ad valorem and a poll tax, and also occupation and income taxes, except in agricultural and mechanical pursuits."

MR. NUGENT said that heretofore their tax laws had been loose; they had no effective system of taxation; property had been taxed, and utilized in support of the Government. Their object should be to reach that class of persons and to bring them forward from their hiding places, to bear their share of the expenses of the Government. He opposed the levying of the occupation tax, because it was discriminating against one class at the expense of another. If they could reach their non-paying property owners, less than 35 cents would carry on the State Government, and would leave a handsome sum for the State schools. He referred to the ad valorem taxation in the above estimate. But it was proposed to carry on the occupation taxes. This compelled professional men to pay more than one-half of the burthens of the Government. It took some eight or nine hundred thousand dollars to run the State Government, and an ad valorem tax would pay all that. Not only did they compel professional men to pay one-half of the taxation imposed, but imposed on them an ad valorem tax besides. Why tax the poor lawyer and doctor with an occupation tax, who had not a cent at the end of the year and could not do more than pay their board, and then exempt others. He was opposed to it from the beginning to the end.

He claimed that for years, at every political meeting on the stump, the cry had been "relief, relief" against that occupation tax. It was also repugnant to every honest farmer with whom he had ever discussed the question, and yet it was proposed to fly in the face of that sentiment. The lawyer, the doctor, and the merchant paid their ad valorem taxes. They all owned visible property, and were taxed on it, and in addition they were levied an occupation tax upon them. It acted prejudicially to certain classes of our citizens. It was a mistake to suppose that the merchants made up by a slight per cent on his goods to make up his occupation tax. He added twenty times the amount to it and it all came out of the pockets of the purchasers—the laboring classes. It was giving the Legislature power to create a monopoly in favor of a few individuals. It was said that some would escape under a system of ad valorem taxation. Some would escape the payment of taxes under any system of taxation. He was opposed to harassing the young lawyers and doctors, and other professional of men of Texas soil; and was in favor of every man being permitted to fight the battle of life without oppressive burdens being put in his way. The honest farmer, as well as the lawyer and doctor, wanted it repealed. He had desired to explain the views of his constituency on these subjects, and this was the reason for his troubling the Convention with his remarks.

MR. JOHNSON, of Franklin, said he was willing to leave the whole matter to the Legislature.

MR. COOK, of San Saba, moved to amend Mr. Sansom's substitute, by adding "provided that all property belonging to churches, institutions of learning and charitable institutions, be exempted from taxation."

MR. SANSOM accepted the amendment.

MR. MCKINNEY, of Walker, said he was unwilling to try the dangerous experiment of abolishing the occupation tax, and did not see why the legal or any other profession should be excused from bearing a proportionate share of the burdens of Government. He was opposed to class legislation, and to untried ways of raising revenue. He defended the occupation tax system.

MR. MARTIN, of Hunt, spoke next in opposition to the tax.[84]

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[84] His speech was printed in full in the *State Gazette* (Austin), November 2, 1875.

He said: "Mr. President, the question pending is the substitute offered by the member from Lamar, 'that the Legislature shall have power to impose ad valorem and poll taxes, also occupation and income taxes, except on agricultural and mechanical pursuits.'

"As one of the delegates who represent the Tenth Senatorial District, I came here to assist in making an *organic* law, and *not* to provide for the levying for the unjust and unequal tax which this substitute proposed to be raised by imposing a tax repugnant to every sentiment of justice and sound principle of public policy. It proposes a tax, which, according to its very terms, creates distinction in society; a principle at variance with our republican institutions, and a departure from the traditions and policy of the Democratic party. It is a tax that is wrong in principle, wrong in policy, and unjust in its practical operations.

"You start out here, in this article, by declaring that 'taxation shall be equal and uniform throughout the State.' Now, sir, I ask gentlemen to consider whether or not this proposed mode of taxation is equal and uniform. Sir, there is not a member of this Convention who will rise here and say that it is. Having chosen agricultural pursuits, to which my life has been mainly devoted, why should I not be taxed the same as any other class? Why make this distinction and discrimination? If a few classes ought to be taxed, to the exclusion of others, where is the 'equality and uniformity' you declare shall prevail in all the taxes which are to be levied?

"It is opposed to my sense of justice, and for that reason, if for no other, I oppose this tax, and I came here imbued with the sentiment that it was wrong and should be abrogated. Now, sir, the gentleman from Anderson, on yesterday, declared that if this tax were not perpetuated, there would be a necessity to raise additional taxes upon the people of the State. I have the highest respect and regard for the opinions of that gentleman, but he will allow me to say that he committed a great mistake, a grave and capital error, when he said that taxes would have to be levied upon the producing classes alone. I have some statistics in my hand which I will read, and which will fill this vacuum in the revenue, without additional tax upon the hard working classes of our citizens, and I stand here as the representative of a constituency composed of laboring men, who earn their living 'by the sweat of their brow.' Let us see if this deficiency can be supplied without levying an unjust and onerous tax.

"According to the Governor's message, and you will also find it in the records of the Comptroller's Office, there are now 35,000,000 acres of patented lands in the State, not rendered and on which the owners pay no taxes; and in addition to this there is a very great under valuation of the property of railroad companies and other corporations; for instance, the Pullman Palace Car Company render only $56,000 worth of property, while they own about $200,000.

"The Houston & Texas Central Railway Company owns 501 miles of road which they render at $11,500 per mile, while it is worth at least $30,000 per mile, by which the State loses the taxes on the difference between $11,500 per mile and $30,000 per mile, amounting on 501 miles of road to the handsome sum of $9,268,500. At this rate the State losses on the 1,650 miles of railroad within her limits the immense sum of $30,525,000. Add to this the 35,000,000 acres of land unrendered, at $1 per acre and we have $35,000,000 more, making a grand total of $65,680,000 worth of property on which the State receives no revenue. At the present rate of State tax the amount of revenue due to the State on this propetry is $328,400 annually, which wants only a small sum of supplying the deficiency which would be caused by abolishing the occupation tax.

"In addition to the above there are large quantities of land which are rendered at a mere nominal valuation, but which will under the proposed system of rendering in the county where it is situated, be assured at something near its real value, and as the eighth section of this article provides for the collection of taxes on property in the county where situated, the State will gain a large revenue which has been heretofore lost. While I believe that the Legislature should be left to say what taxes should be levied, yet I believe it just for this Constitution to require the assessment and collection of taxes on property in the county where it lies.

"A distinguished, or rather, a noted ex-judge of this State, a short time ago declared that 'none but fools and poor men ever pay taxes in Texas,' and the records at the Comptroller's Office appear to prove the truth of the assertion. He is rich and pays but a small amount of taxes. It is this class, and these stupendous and overshadowing corporations, grown insolent over the millions they have wrung from the bone and muscle of the country, who, by this proposed amendment, would be exempted from taxation. What a withering, bitter, and biting sarcasm upon the poor, to come from the mouth of a judge who has grown rich from the emoluments of office bestowed upon him by a generous and confiding people.

" 'None but *fools* and *poor* men pay taxes!' 'Pity 'tis, '*tis* true.' Truly, sir, this array of facts, supported by the official records, do, with ten-fold emphasis, establish the truth that none but the *poor* men pay the taxes in this State. Yes, sir, it is the toiling millions—the poor but *honest* men—who, through dust and sweat, the scorching heat of summer, the chill and surly blast of winter, that forge out the coin to pay the taxes for the support of the Government.

"But, sir, if this Convention reflects the will of the people who sent them here, as I know they will do, the day of their redemption is near—their deliverance is at hand—the dawn of a brighter day is breaking, and fresh hope blowing and warming in the sun, give assurance of a renewed and renovated life. Now that the people have shaken off the paralysis superinduced by fifteen dreary years of disappointed hopes, blasted prospects, and ruined fortunes, they once more are about to resume the conduct and control of their own affairs, giving assurance of an honest and just Government.

"The mercantile statistics of this country show that 20 per cent of that class fail in business, which is conclusive that as a class they are not rich but poor.

"This tax operates unequally as between different persons of that class. Doctors, lawyers, and many others who pay this specific tax are as poor as any class of our citizens, besides every man of intelligence knows that the customer of the merchant who buys his goods, pays it in the increased per cent put upon them.

"The client of a lawyer and the sick who employ a physician in reality pay this tax, and instead of relieving the poor it is in fact and in truth but an additional burden put upon them indirectly and cannot but deceive.

"It is therefore wanting in the elements of truth and direct action that should always characterize the solemn and grave enactments of a legislative body.

"It is a violation of a cardinal doctrine, reiterated a thousand times by the Democratic party that the ad valorem principle of taxation is the only just and true one, and is solemnly ennunciated in the first section of this article, and also that taxation shall be equal and uniform.

"Then, sir, with firm adherence to these principles, I shall carry out in good faith the pledges made to the people, whose interests were confided to my care and keeping."

MR. FERRIS defended the occupation tax system. He said it was one of the most important questions that would be discussed in the Convention, and if the Constitution was ratified, might be the policy of the State for the next fifty years. Members said the occupation tax was unjust, and were yet willing to leave it to the Legislature. If he believed it unjust, he would vote against it and not leave it to the Legislature. But he held it just and eminently proper that they should give the power to deal with it to the Legislature, in accordance with Mr. Dohoney's amendment. He supported that amendment, and held it to be a true and correct principle of political economy, that the Legislature should provide for occupation taxes. This very proposition was adopted in the Constitution of 1845 and wisely too. It was an error on the part of one of the speakers to say there was no occupation tax before the war. He read from the laws of 1858. The ad valorem tax before the war was only 12½ cents on the $100. An occupation tax was also levied at that time, of which there was no complaint, and which he held operated justly. He read from the laws of 1858 a long list of occupations taxed, establishing the truth of his assertion. There was no occupation tax on lawyers, doctors, or preachers. There was merely a reasonable tax placed on certain occupations. Persons having no occupations avoided paying the ad valorem tax. If they denied the power to levy occupation taxes they placed it on the producing classes, making them bear the burdens of Government. In time of war, too, it would be necessary for the Government to raise revenue to meet the exigencies of the occasion, and without an occupation tax, it would fall almost entirely upon the producing classes. During the late war both the United States and our own State, after assessing an ad valorem tax, restored the occupation and income taxes. Income taxes would not reach the case always. Added to the ad valorem tax it could not make taxation equal and uniform because it would be assessed on the farmers and producing classes, and discriminate against them. It was the farmers who, since the war, had borne the burden of taxation. He spoke of the case of a man with an annual income of $20,000, who had avoided the payment of ad valorem taxes. There was in the country a certain class of citizens, and he had nothing to say against them, except that they always rented, and did not care to acquire property.

MR. MCCORMICK inquired if the man who rented did not pay taxes.

MR. FERRIS answered, not unless it was in his contract. On the first of January, a man doing a $20,000 business, would not have $1,000 in his store, and you could not reach him by an ad valorem tax, so why should they not pay occupation taxes when the exigencies required it? The knowledge acquired by professions was their capital, and they ought not to be made a privileged class. They required license before exercising their duties, and charged more in proportion than ordinary labor, and ought not to be privileged any more than the farmer. He was opposed to taxing the producer and excusing the non-producer. With respect to lawyers or other professions, when it was thought they ought not to pay an occupation tax, they might be excused. Before the war they were not taxed, and it might be safely left to the Legislature to grade taxation so as to make the burdens of the country equal and uniform. He did not want them to say that the Legislature should not have the power to levy an occupation tax thereafter. He would join hands, if in the Legislature, with anyone to reduce the occupation tax down to that of 1845, or to relieve the lawyer or doctor, but this was not the place to make the exception. They were purely matters for the Legislature.

MR. GERMAN moved to substitute for Sections 11 and 12, to provide for the election of an assessor and collector, who should hold his office for two years.

GENERAL WHITFIELD spoke in favor of leaving the collecting with the sheriffs. It took a *man* to be a sheriff. He had the protection of life under him. His life had been saved by one. If they withheld the work of collection from him, they could not get the office adequately filled.

MR. ROBERTSON, of Bell, said he was in favor of separating the office of assessor and collector, but not taking the latter office from the sheriff. It would not enable them to get good men. He was in favor of checks, because while a good sheriff was capable of doing much good, a bad one would work great wrong.

COLONEL CRAWFORD said he was opposed to leaving the collection of taxes to the sheriff, because they deputized duties, and some must be neglected.

MR. FLEMING said he hoped the amendment to provide a tax collector for each county would not be adopted, for if it was, it would have the effect of depopulating Comanche County, for without the addition to his salary gained from collection it would be impossible to get a competent sheriff there.

MR. BARNETT said he was opposed to the change.

MR. DILLARD said he lived in one of the small counties, and he favored the election of a combined assessor and collector in each county. Before the war the sheriff never collected the taxes, and they always had efficient sheriffs.

MR. GERMAN spoke in favor of the combination office of assessor and collector of taxes. From 1845 to 1869 the offices were combined. The sheriff was not made a collector until after the adoption of the Constitution of 1869. The fact was, it was electing one man to fill two offices. The people in the late canvass had unanimously declared against it.

MR. SANSOM said he was opposed to the dual office in the sheriff, but his county could not afford both assessor and collector. They did get good sheriffs in his county when they held that office solely.

MR. MCCORMICK said he thought no man should both assess and collect taxes.

Mr. German's substitute was lost.

## FORTY-THIRD DAY

### MONDAY, OCTOBER 25, 1875[85]

### *Taxation and Revenue*

MR. MCLEAN moved an additional section to take the place of Section 8: "The county courts of the several counties and the municipal authorities of the towns and cities of the State, are prohibited from creating any debt against said counties, towns, and cities, provided that towns and cities situated on the coast may incur debt for the protection of life and property against storms, by a vote of those who pay taxes on property in said towns and cities." He explained his reasons therefor and was in favor of a cash system. The cry of inflation was not occasioned by a want of money or of production but from the burden of debt with which she was overwhelmed. The national debt was dwarfed by state, county, or city debts, and either was enough for the purposes of bankruptcy. He spoke of the robbery of the poor at Washington by speculators and rings in the purchase of city lots and improvements. The same could be said of their own municipalities. His amendment would prevent the creation of that kind of debt, because it would require the payment of cash with the contract, and require approval by the taxpayers before payment.

MR. KILGORE said he agreed with Mr. McLean, but thought it was inappropriate to the article being considered.

JUDGE REAGAN said that he agreed in the main with the amendment, but thought it was too general in character, and would prevent counties, unless some other provision were adopted, from paying their current expenses.

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[85] The proceedings of this day were taken from the *State Gazette* (Austin), October 26, 1875.

**MR. FLOURNOY** said that, while agreeing with Mr. McLean, he thought it would be well to await the report of the Committee on Municipal Corporations.

**JUDGE BALLINGER** said he was of a similar opinion.

**MR. WRIGHT** said he did not think the amendment injudicious. In his county the county court sometimes levied the tax two or three times higher than the State tax. They paid six-bits a day for feeding prisoners a piece of meat and cornbread. He thought that the counties should be restricted to the ordinary amount of expenses, except in the matter of courthouses and jails. He protested against allowing counties to create debt to any extent. Red River County had incurred a debt she would never be able to pay off.

**MR. MCCORMICK** said he thought it should be referred to the Committee on Municipal Corporations, but was heart and soul with the amendment. The State tax was 50 cents on the $100, and his county tax was $1.40 and when he left home the county court was busy bonding and funding its debt. The City of Galveston paid 30 cents for feeding prisoners, which cost his county $1.40 a day.

**MR. MCLEAN** said he agreed to leave the matter with the Committee on Municipal Corporations, and withdrew his amendment.

**MR. FERRIS** moved the following to take the place of Section 4: "The Legislature shall not have the power to divert from its purpose any special fund that may or ought to come into the Treasury, and shall make it penal for any person to borrow, withhold, or divert from its purpose any special funds or any part thereof." He said he understood before the war that the school tax, university, frontier, and other funds, had been diverted by speculation, and the party speculating being prepared when the Legislature met, to make good the fund. He held that an express provision ought to be made to guard against it. The amendment was adopted.

**MR. NUNN** moved to strike out Section 8. He said he advocated a general rule in dealing with these matters, and that the rule laid down was purely a legislative rule. Was it intended to withdraw the compromise made with the International Railroad? Both he and his constituency were opposed to interfering with this compromise, though individually he had not approved it. If the compromise was to be interfered with let it be in a bold and manly manner. He believed too that more money would be collected by taking the statement of the land owners than by the policy now sought to be inaugurated, for it had been tried and failed.

MR. MCCORMICK said that the section it was proposed to strike out addressed itself to the judgment of nine-tenths of the Convention. The clause in the Constitution of 1869 merely required the assessment and collection of taxes on property in precincts, and did not apply as this section. He could see nothing in the section affecting the International. If the company had anything exempted by law let them keep it, but if there was anything not exempted let them pay their taxes. The counties were entitled to their dues, but it took years sometimes to get them from the State Comptroller.

MR. MCKINNEY, of Walker, said that he thought "all land" in the section would include the International, and thought it would be well to exclude it by an additional clause.

MR. GAITHER proposed the following as a substitute for Section 8: "All landed property shall be assessed in the county in which it lies, and the taxes may be paid by the non-resident, in that county or to the Comptroller of the State."

PRESIDENT PICKETT took the floor and said that he thought if any section affected the International it was the first and not the seventh, but he thought that neither would affect it. It was not necessary that the Convention should say anything at all about the International in the Constitution, because, if the compromise was legal—and he was not there to say whether it was legal or not—they could not interfere with it. If the Convention were even to pass an ordinance it would be of no effect, because, by the Constitution of the United States, they could not impair the obligations of contracts.

MR. ALLISON moved to amend the section by inserting, "not exempt from taxation."

MR. FLEMING moved to table Mr. Nunn's amendment, and it was tabled.

JUDGE BALLINGER said he was opposed to restricting land owners in the payment of taxes. The assessment of lands in the counties in which they lay had already been secured. It would be inconvenient and expensive to compel non-residents to pay their taxes in the county. The officers of the State assured him that there was no difficulty in the counties obtaining their quota of taxes. It would be very burdensome on widows and poor people to make them travel to remote counties, or pay an agent there a commission of $5—the lowest that would be charged—to attend to the payment of their taxes. In his own county he was frequently consulted by people desirous of paying their taxes in frontier counties, as to how they could do it.

MR. MCCORMICK said the convenience of counties, and not of individuals, should be consulted. He claimed that it was difficult, as well as expensive, to obtain a settlement with the Comptroller, and the counties would often be credited with the amount they owed to the Ayslum Fund instead of receiving it in cash.

JUDGE REAGAN supported the views of Judge Ballinger. He said that in the first place, if only "lands" were included in the section it would not include flocks and herds as taxable property. He thought one of their highest objects was to make the Government cheap and easy to the people. Non-residents would either be compelled to travel to the counties, employ an agent, or entrust their money in letters to the manipulation of the postmasters, because it could not be sent by postoffice order. People were invited to the country, they bought or were given land in frontier counties, but they could not live there, and bought lands in the populous counties, waiting until they could go to the frontier lands in safety. It would be very unjust to put those people to inconvenience. It was beginning to look as if it were almost a crime to own land in a county where a person did not reside.

MR. MCKINNEY, of Walker, admitted that it would occasion some inconvenience, but said that most parties had friends in the frontier counties who would attend to the matter of payment of taxes for them. He advocated this plan, he said, because all other plans for the collection of county revenue had failed.

MR. HENRY, of Smith, said that one of the most important duties of the Convention was public convenience. Instead of throwing obstacles in the way of collecting taxes, it ought to facilitate their collection. There had not been a half million dollars worth of taxes collected in the last quarter of a century, but where the parties had voluntarily hurried up to the Comptroller to pay them. He insisted that the proposed system had been tried in the Constitution of 1869, and that the people had petitioned for relief to the Thirteenth Legislature for relief from that provision.

MR. RUSSELL, of Wood, said he understood it differently and that he, too, had been a member of the Thirteenth Legislature.

MR. GAITHER withdrew his amendment and submitted the following: "All property shall be assessed in the county where situated, but the taxes due by parties not residing in the county may be paid in the county where assessed, or at the office of the Comptroller of Public Accounts."

MR. WRIGHT said he thought the assessment of taxes in the county where situated covered all the ground. To demand that parties living in his county, for instance, should open communication with the Rio Grande would be equal to compelling them to open communication with Great Britain or some other foreign country. In reply to Mr. McKinney he would state that he did not have friends all over the country who would attend to his business for him, and in cases where he had entrusted the payment of taxes to friends he has lost lands, taxes, and friends, having heard nothing of any one of the three later on. As to the Comptroller deducting what was due the State from counties for the cost of lunatics, he thought that was only fair. Surely they did not object to paying their just debts. It might inconvenience parties dealing in county scrip if it did not come back to the counties, but that could not be advanced as an argument. It had been said that they were making a Constitution for the poor. He held that they were making one for the rich, as well as the poor, and for all alike.

MR. JOHNSON, of Collin, said he thought gentlemen were making a hole somewhere to crawl out of. They did not want the assessment of land in counties, but they had given that up. When the Comptroller had charge of assessment, did he perform the obligations resting upon him? The Comptroller had said there were 25,000,000 acres unreturned, while Governor Coke had assured him that there were 50,000,000 acres unreturned. Was it to be supposed that he would be any better at collecting than assessing? He denied that the people said that the poor man paid all the taxes, but said they did say that the rich man was favored at the expense of the poor man. In his county there were 200,000 acres of land not rendered for taxation, and 25,000 acres of these were school lands. There was something dead up the creek as sure as they were born. The opposition, finding that they were defeated in the main question, were seeking to get even by amendments.

MR. RUSSELL, of Wood, said he denied that it was desired to oppress capital or obtain class legislation. They desired to protect all classes alike; but if the burdens must bear a little harder on one class than another, they preferred that it should be upon the class which was the better able to bear them. The whole question resolved itself into this: Should they pass a Constitution that should compel the powerful and wealthy to come up to the mark and pay their share toward the support of the Government? He referred to the identical clause it was sought to incorporate as the one which came before the Thirteenth Legislature, was passed by the House, returned by the Senate, and on which he was appointed Chairman of the Conference. He thought that it should be insisted upon that taxes should be paid in the counties.

MR. NUGENT held that the substitute was discriminating in favor of the rich man as against the poor man. The question was not whether it would affect any class, but would it insure the speedy and effective collection of taxes. He contended that neither the substitute nor the suggestion of the gentleman from Anderson met the difficulty, which was better provided for by the section as reported by the committee. The assessment and payment of taxes in counties were inseparably connected. It was all moonshine to talk of money being lost by draft. A draft on Galveston was good anywhere in the State, or as his friend from Comanche intimated, at a premium.

MR. ROBERTSON, of Bell, said he knew of no law authorizing a sheriff to receive anything but greenbacks.

MR. FLOURNOY moved to table Mr. Gaither's amendment, but the Convention refused by a vote of 37 to 39.

MR. FLOURNOY moved to amend Section 1 by adding, "The Legislature may also at its discretion provide for levying a tax on the gross earnings and franchises, or either, of all corporations, or of any class of corporations."

MR. STAYTON said that if it had been intended to do this the section as it stood before covered the case, and the amendment was unnecessary. It was well known that franchises were property. Income taxes were also provided for, since corporations were regarded by the law as individuals.

MR. FLOURNOY said there were good reasons to doubt whether under a general designation of property franchises would be embraced. He thought that gross earnings might be considered from the standpoint of the incomes of the several individuals, and they might find it necessary to call it gross receipts. The amendment did not require the Legislature to do that, but he had proposed it because he considered it essential to the other provisions.

MR. STOCKDALE said he thought his colleague was right in saying that franchise was property, and, therefore, under the first clause of the bill, must be taxed like other property, according to its value. There was another provision in that or another section, which provided for the taxing of incomes. This included the taxing of corporations as well as individuals, so if there was to be an equality of taxation, the subject was amply covered in that article already. The fact was the amendment was intended to give power to the Legislature to levy a specific tax on corporations for their franchise, the same as they would levy a tax on a man's watch, his diamonds, or his carriage. Did they propose to establish a specific arbitrary tax on all the railroads in the State? Income was a matter of definition. They had gone before so far as to declare that the house a man lived in was income. Did they propose to tax the net income of individuals as well as the gross earnings of railroad companies? The gross earnings of the railroads were all absorbed in the running of the roads and in keeping them in repair. From a sense of policy, if not from justice, taxes had been withheld from the gross earnings. It had been the idea that they had desired to encourage the railroads. It was right that they should pay taxes as individuals, but they surely could not want to lay a special tax and by a different rule of ascertaining discourage the construction of railroads. He thought it would be better to leave it as all private corporations who owned property had been left, for their private incomes to be taxed as individuals.

MR. CLINE said the same subject matter had been voted on before, and rose to a point of order. His point was not sustained, as the Chair held that the subject matter came up in another section.

Mr. Flournoy's amendment was carried by a vote of 46 to 33.

MR. RUSSELL, of Wood, proposed the following as a new section: "All property of railroad companies shall be assessed and the taxes collected in the several counties in which such property is situated, including so much of the road-bed and fixtures as shall be in such county. The rolling stock may be reported in gross in the county where the office of the company is situated, and the tax paid upon it shall be apportioned by the Comptroller pro rata among the several counties through which the road passes, as a part of their tax assets."

MR. DOHONEY said he could see no necessity for the amendment. He thought the whole subject had been provided for in Sections 1 and 3.

JUDGE REAGAN said railroads were a great outrage and should be prohibited, and it should be made a criminal offense to encourage their construction. He suggested that the delegate from Wood had a chance to immortalize himself. Whatever question might be argued before the House, something was sure to be said about railroad monopolies. There were only forty or fifty millions of dollars invested in railroads in the State, which gave the citizens faster transportation for themselves and their products; but they had the right to return to the mule or ox-wagon and give up travel at 5 cents a mile on the railroads. The policy of the people had been all wrong for the past twenty-five or thirty years; or at least anyone believing that should indict them as a nuisance, or for a misdemeanor. He could not make the motion himself, but suggested that someone who desired to immortalize and cover himself with glory should make that motion.

MR. RUSSELL, of Wood, said that the amendment he had moved was one of the sections proposed by Mr. DeMorse, in the majority report. He thought it very strange that Judge Reagan should seek to burlesque any one on that floor for seeking to secure the taxation of property fairly for every county in the State. He said he had been one of Judge Reagan's warmest friends, and had stood by him fifteen years before when it took friends to hold him up and help him to a seat on the floor of Congress.

JUDGE REAGAN contended that his speech should not be construed as an attack upon Mr. Russell. He had merely meant to encourage him in his noble aspirations.

MR. RUSSELL, of Wood, said he stood there on the principle of right and justice. He was not to be prevented from doing his duty by any ridicule the gentleman might seek to throw upon him. He had suggested no unjust burdens on railroads in his amendment. He had drawn it up from the section reported by the honorable gentleman from Red River, because he believed him to be capable and just, and because he believed the counties entitled to the benefits to be derived from the amendment. But it had been sought to ridicule it because it came from a farmer, and not from one of the legal profession. He asked no favors from any of them, but intended to assert and maintain his rights. Judge Reagan believed that the railroads were right, and he (Mr. Russell) believed they were wrong. They had the right to differ, but neither he nor any other gentleman had the right to attack him in that manner for a mere difference of opinion. He hoped he would make no more such attacks. He had had no better friend in Texas than he, Russell, was. He had not come to Austin to hamper railroads, but to protect the best interests of the counties of the State.

MR. DEMORSE said he had taken little interest in the action of the Convention upon taxation, beyond keeping his own votes right, but he thought it proper that he should say in relation to the clause from the majority report, offered by the gentleman from Wood, that it had been inserted in the majority report upon the earnest suggestion of the Comptroller, that it was important, that that officer had stated that under the present system of assessments he had no way of determining whether the values reported were correct, but if the property were assessed in the counties where the road ran the State would get its just dues. He said that a sense of duty had led him to make the explanation, and that, having done so, he would avow his utter indifference as to what might be the action of the Convention on the subject. He did not think they should do wrong to railroads, and he had just recorded his vote against taxing franchises, which he thought would be wrong since they taxed the real property.

MR. KILGORE said the law of 1873 provided that every railroad in the State should render its property for assessment, and the number of miles of its road-bed in each county, their personal property to be reputed from the general office, and that to be apportioned to the several counties, but he was opposed to incorporating that law in the Constitution.

MR. FLOURNOY said his impression was that the law had been repealed. It was not proposed by the amendment to increase the taxation of railroads, but simply to provide that the county commissioners might assess pro rata on such portions of the road as passed through their respective counties, and that the balance be apportioned in the manner described. It did not affect railroads in the least, was a matter in which they had no concern, but was simply a matter between the counties and the Treasury.

JUDGE REAGAN said if one thing was clear in his mind it was that they had already provided that *all* property should be assessed in the county where situated, and that saying so once was enough in one Constitution; but it might be that railroads were not considered property, and that it was necessary to mention them again to get the tax to stick.

The subsitute of Mr. Russell, of Wood, was adopted by a vote of 56 to 24.

## FORTY-FOURTH DAY

### TUESDAY, OCTOBER 26, 1875[86]

MR. JOHNSON, of Collin, offered a resolution providing that the Convention hold night sessions.

MR. WEAVER offered an amendment providing that the officers of the Convention should receive $2.50 per night, and the President $5. He said he knew that a number of delegates were becoming restless and desired to go home. His court was then in session, and he was losing probably $50 a day on the average, and would like to be at home as well as any one else; but he doubted whether night sessions would really accelerate business. He would, however, vote for the resolution, if the Convention would pay the extra prices named to the officers, as they had nothing to do with the length of the deliberations of the body. He thought that he could get along with five hours sleep.

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[86] The proceedings for this day were taken from the *State Gazette* (Austin), October 27, 1875.

**MR. JOHNSON**, of Collin, said a great many members were inflated with an extra amount of gas, and he wanted to have night meetings so as to let them have a chance to let off their surplus quantity.

**MR. WRIGHT** said he was working all day, from 9 in the morning until nearly night, and then stayed in committees until 10 or 11 o'clock, and no extra time whatever left. Many of the committees were still hard at work, and had not been able as yet, with all their diligence, to make their reports. If the Convention voted to have night session he would resign his position on the committee of which he was chairman, and let somebody else do the work.

**MR. RUSSELL**, of Wood, moved to postpone the resolution for a week and to make it the special order for that day. It was carried.

### *Taxation and Revenue*

**JUDGE REAGAN** moved to strike out the first four lines of Section 8 and insert, "all property, whether owned by persons or corporations, shall be assessed for taxation in the county where it is situated, but the taxes may be paid in the county where the property is situated, or in the county where the owner may live, or at the Comptroller's Office."

**MR. RUSSELL**, of Wood, rose to a point of order, claiming that the same subject matter had already been voted on that morning.

**PRESIDENT PICKETT** held that all except the proposition that taxes might be paid "in the county where the owner lives" was out of order.

**MR. STOCKDALE** appealed from the decision of the Chair. He said that a single proposition conclusively negatived could not be presented again, but if presented in connection with another proposition it could be entertained, as in a motion to strike out and insert, where it might be repeated in endless variety. (Cries of "question! question!")

**JUDGE REAGAN** said he hoped that the gag law would not prevail, when there were forty members who believed with him that an injustice was being done them.

**PRESIDENT PICKETT** said that argument would not prevail, but if the member from Calhoun would present a single parliamentary authority he would decide in their favor.

**JUDGE REAGAN** said it was useless to present authorities if the amendment was decided out of order first, because the wrong would be already done.

**PRESIDENT PICKETT** said he hoped the Convention would not vote to sustain the Chair from any personal feeling. He would much prefer that the Convention should put parliamentary law under its feet.

**MR. STOCKDALE** said he did not believe that the Convention had any right to put parliamentary law under its feet.

**MR. MCLEAN** said he thought the Chair was wrong, and in support of his contention referred to *Barclay's Digest.*

**JUDGE REAGAN** submitted Cushing as authority in support of his position.

**PRESIDENT PICKETT** held that Cushing was not applicable, as it referred solely and exclusively to the striking out and inserting of words; but he said that he was so anxious to do justice that he would accept even the semblance of authority and accept the amendment of Judge Reagan. He would therefore hold, that the point of order raised by Mr. Russell, of Wood, was not well taken.

**MR. RUSSELL**, of Wood, protested against the consumption of time on the subject. He said that, with all due respect to the Chair, it was clear to the members that the question had been voted on before by the Convention.

**MR. GRAVES** appealed from the decision of the Chair, but withdrew his appeal while the vote was being taken by yeas and nays.

**JUDGE REAGAN** spoke to his amendment, explaining its new feature, which was the payment of taxes assessed on property in other counties than in the county where the owner lived. This would save the expense of agents and all dangers in the transmission of money, and so long as the counties received their just dues it could make no difference to them. His plan would probably facilitate them in getting what justly belonged to them.

**MR. MCKINNEY**, of Walker, opposed the amendment. He said the subject had been discussed over and over again. He characterized the gentleman from Anderson as the special apologist of corporations.

**JUDGE REAGAN** asked if he understood the gentleman to say that he (Reagan) was a friend to special interests because he protested against fanaticism.

**MR. MCKINNEY**, of Walker, said that he thought the gentleman had placed himself in such a position by his attitude of the preceding day.

**MR. MCCORMICK** moved to refer to a special committee of five.

**MR. FLEMING** moved to table.

**MR. DARNELL** said he hoped the motion to table would not prevail. The motion was ruled out of order.

**MR. FLEMING** moved the previous question.

**MR. WAELDER** rose to a point of order, claiming that the previous question was to re-commit. He was sustained, and the House refused to re-commit by a vote of 34 to 46.

**MR. GRAVES** moved to close the debate on Judge Reagan's motion and was sustained.

Judge Reagan's amendment was lost by a vote of 25 to 55.

**PRESIDENT PICKETT** said the question before the House was the engrossment of the bill.

**GENERAL WHITFIELD** said that the baby—meaning Mr. Fleming's report—was becoming a fine and well-developed child—and asked that it should be printed with all its amendments and made the special order for the following Saturday at 10 o'clock.

**MR. FLOURNOY** said he would support the motion. There was nothing left that he could do, since all that could be recognized as a part of the original bill was the heading and the signature.

General Whitfield's motion prevailed, and 160 copies of the article were ordered printed.

**MR. WEST** said that it would take the secretaries some time to get all of the amendments ready for the printer, and so he moved to adjourn. His motion prevailed.

## FORTY-FIFTH DAY

### WEDNESDAY, OCTOBER 27, 1875[87]

**MR. SCOTT** called up his motion to amend the rules, so that after any article in the Constitution should have passed its third reading it should go to the Committee on Style and Arrangement, and when presented by said committee should not be subject to any amendment which would change its meaning and intent except by a two-thirds vote of the Convention.

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[87] The proceedings for this day were taken from the *State Gazette* (Austin), October 28, 1875.

JUDGE REAGAN argued the right of the majority to control and shape its action until the new Constitution was completed, even after it had been returned by the Committee on Style and Arrangement.

MR. SCOTT said he thought Rule 4 was a mistake of the committee. He thought the people understood what they wanted, and that their representatives understood their wants, and that after a proposition had been passed on three times it ought not to be opened to a similar process after it came from the Committee on Style and Arrangement.

MR. FLEMING said he was in favor of the amendment.

MR. RUSSELL, of Wood, spoke in favor of the amendment.

MR. RAMEY supported the amendment. He said that he was astonished that it should be expected that a majority should control after matters had been finally settled. He said he had been a member or spectator of legislative bodies for years, and this was the first time he had ever heard such a proposition submitted.

MR. STOCKDALE said that no rule had been more maturely considered than Rule 4. The idea was not to place the Constitution out of the power of the House at any time, he said. He understood that there must be an end to their deliberations, but that end was to be made under the ruling power of the House—that was a majority. The idea of the committee had been not to conclude the House from making such changes as were necessary.

MR. CLINE said he thought it was important and proper that they preserve the original rule.

MR. MILLS called attention to the vote by which the Democratic party had given the people universal suffrage, and said that if in 1866 the people had been given the rights afterwards assured them by Congress, such words as "scalawag" and "carpet-bagger" would have had no meaning in the Convention. He said he believed the gentleman from Anderson wanted the section on universal suffrage stricken out.

JUDGE REAGAN said that he had been a citizen of Texas for thirty-seven years, and his actions, both in public and private life, had been open to the country. When the gentleman from Grimes ascribed sinister motives to him—considering the source from which it came—he paid one of the highest compliments it was possible for him to pay.

MR. MILLS said that if the House was permitted to change articles after the return from the Committee on Style and Arrangement, they would be in session four months.

MR. WEAVER said he understood that the committee had no power excepting that pertaining to style and arrangement, and that it had no power to alter acts of the Convention.

MR. NUGENT opposed the Scott amendment.

MR. FLOURNOY supported the Scott amendment. He said that he admitted the rights of majorities, but that it was necessary, in order to secure final action, to provide rules for such action.

MR. STOCKDALE said it might be found that some grave errors had been made in framing the Constitution, or that sections might be found to conflict in opinion. This had occurred in the Constitution of 1869 several times.

MR. MCCORMICK said he opposed the rule as it stood and would favor the change as suggested.

MR. DILLARD said he thought it would be best to make no change in the rules. If a majority could control in the final reading, when could they be expected to get through with their work?

MR. SCOTT argued that Rule 4 was in itself void.

MR. WADE said there was more discussion on the question than it was worth. He thought a two-thirds vote should settle it and secure the adoption of all important amendments.

MR. BARNETT said he thought that if there were grave errors when the Constitution was reported by the Committee on Style and Arrangement there would be no difficulty in obtaining a two-thirds vote to correct the errors.

The vote on the adoption of the new rule was lost by 52 to 27, lacking a two-thirds vote.

MR. SCOTT said the former rules had been adopted by a majority vote.

MR. WEAVER, with permission of the Convention, changed his vote from "no" to "aye," which gave the required two-thirds vote and adopted the new rule.

JUDGE REAGAN rose to a question of privilege, and referred to a paragraph in a local paper, the *Gazette*, making the following correction:

"In this sentence of Mr. Russell, of Wood, remarks, in reply to Mr. Reagan, published yesterday, the word 'subsidies' was inadvertently omitted. 'Mr. Reagan believed railroad subsidies were right, and he (Mr. Russell) believed they were wrong.' "

(This correction was made at the request of Russell, of Wood.)

MR. RUSSELL, of Wood, said he had been laboring under some excitement during his colloquy with Judge Reagan, and had intended to say "land subsidies."

JUDGE REAGAN said he had always opposed money subsidies. He thought the *Gazette* had been distorting his views in its reports.

MR. NUGENT rose to a question of privilege, complaining that he had been placed in a false position by the publication of the speech of Mr. Johnson, of Franklin, in that day's *Gazette.* He said he had made some pleasantries in connection with his remarks in the discussion of the question of an occupation tax, which Mr. Johnson had replied to. He thought it was an injustice that he should be placed in a false position by this publication. He had meant no reflection on Mr. Johnson or any other minister in the State. His remarks on the subject had not been published, and hence the speech of Mr. Johnson arraigned him before the whole country.

MR. JOHNSON, of Franklin, said he had published his speech himself in consequence of a garbled account published in the *Statesman* of the colloquy between himself and Mr. Nugent, and which he considered placed himself and the ministry in an improper light before the country.

### *Legislative Department—Third Reading*

MR. MCLEAN moved to amend Section 1 by adding after the word "Legislature"—on the method of amending the Constitution—"at the next general election." The amendment was lost.

MR. WEST moved to reconsider the vote on the McLean amendment. He said it contained an important principle, for it was well known that the people would not come out to special elections, and it would be in the power of a few schemers to defeat the most important amendments to the Constitution at any time.

JUDGE BALLINGER said he hoped the provision would stand as it was. A Constitution should be perfected from time to time and in an easy manner.

MR. MCLEAN spoke in favor of his amendment.

MR. ROBERTSON, of Bell, supported the amendment.

MR. STOCKDALE said he endorsed the attitude of Judge Ballinger and would support the section as it stood.

The Convention refused to reconsider by a vote of 36 to 43.

MR. FLOURNOY moved to amend Section 48 by inserting after the word "schools" the words "to the extent especially authorized in this Constitution." He said that he desired that the Legislature should be limited in that respect. He thought the committee would report in favor of one university, and that it would be included in this provision.

MR. GRAVES moved the previous question on the passage of the article, and was sustained.

The amendment was lost.

The Legislative Article then passed its third reading by a vote of 60 to 17.

## FORTY-SIXTH DAY

### THURSDAY, OCTOBER 28, 1875[88]

### *The School Question—Second Reading*

MR. ERHARD said he had never spoken before, but he thought he should say something in favor of free schools. He denied the wisdom of low appropriations for the public schools, which some members had advocated because of the poverty of the people. He said the late administration had left them a heavy debt, but he thought the State could still bear some taxation for public schools. He insisted that six months of teaching was far cheaper in its results than four months. He said he wanted the children educated from the lowest to the highest branch of elementary knowledge and no farther at the State's expense.

JUDGE REAGAN offered to amend Section 3 by putting the poll tax at $1 instead of $2.

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[88] The proceedings for this day were taken from the *State Gazette* (Austin), October 29, 1875.

MR. JOHNSON, of Collin, offered a substitute providing that in addition to setting apart one-tenth of the annual revenue of the State that a poll tax of $1 should be levied on all male inhabitants between the ages of 21 and 60 years, the money derived to be given to the free school fund.

JUDGE BALLINGER said that if it was intended to establish a school system at all the reduction asked for by Judge Reagan would act injuriously and would be wholly ineffective for the purposes required.

GENERAL WHITFIELD offered the majority report of the Committee on Education in lieu of the special report then before the Convention.

The ayes and nays were called for on the Reagan amendment, and it was carried by a vote of 43 to 36.

MR. WEST spoke next in favor of a generous provision for the public free schools.[89]

He said: "Mr. President, none of the measures before this Convention suit me, and I suppose it would be impossible for every one of us to be suited on this subject, as there is an infinite variety of opinion as to what should be done. I belong to that class who believe firmly in the immense benefits to be derived from the general diffusion of knowledge throughout the country. I am one of those who believe that under every government, under every republican government at least, under every government where the people control, that there should be the widest diffusion of intelligence among the people. I am not, however, one of those who believe in taxing the people beyond all limit for this purpose. We have not sufficient means to bear at present very heavy taxation for this object. I would not therefore favor a proposition such as was offered by the member from Harris (Mr. Cline), which would create at once an enormous revenue to be expended for educational purposes; not because I do not believe it would be beneficial in the long run, but because we are yet too poor for this—not able to stand it.

"I propose, however, to put nothing in the Constitution which will forever tie the hands of the Legislature, so that when the time does come—if it ever does come—when we shall have ample means from the direct school funds and other sources, and coming in annually from general taxation, to establish a good system of free primary schools for the people of Texas, there will be nothing to prevent their establishment here. We all agree with my friend from Titus (Mr. McLean) that at present it is impossible to establish schools all over the State, because of our sparse and scattered settlements, but there are, nevertheless, many thickly settled parts of the State, where it can be done now, and my idea is to leave it with the Legislature, so that a system can be put in operation whenever it may be needed and can be usefully done.

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[89] Mr. West's remarks were printed in full by the *State Gazette* (Austin), November 3, 1875.

"That being my view of the case, I have serious objections to the article now under consideration. I may have to swallow it at last in default of something better, and I should not be at all surprised if I do, but I shall make a wry face when I do so. I have also serious objections to the first clause of the article. It says: 'A general diffusion of knowledge being essential to the preservation of the liberties and rights of the people, it shall be the duty of the Legislature of the State to establish and make suitable provision for the support and maintenance of an efficient system of public free schools.'

"This is too general in its terms. It sounds very well indeed, and it doubtless announces a correct principle, but it is entirely too vague and indefinite to answer any practical purpose. 'It shall be the *duty of the Legislature to establish and maintain* a system of public free schools,' but it doesn't say when or for how many months. It may be that one, two, five, ten, twenty, forty, or fifty years may elapse before anything is done. It shall be the duty of the Legislature to establish free schools whenever the Legislature, in its wisdom, sees fit to do so. This is much too indefinite for me, unless we intend to depart from the faith of the fathers and says, 'we do not intend to make it incumbent on the Legislature to establish free schools at all.' This clause is too general. Whatever we do, let us do it boldly like men. I believe the gentleman from Galveston (Mr. Flournoy) frankly and truly stated the object of a large part of this Convention—I hope not of a majority of it—when in his speech he said that this 'general clause was put there because it was vague and indefinite, the object being to postpone action in the hope of creating in time a public sentiment in the State hostile to public education, and thus at last destroy the whole system.' It is hoped in time to imbue the people with the sentiment of my esteemed friends from Galveston and Calhoun (Mr. Stockdale) that it is unwise, immoral, and almost a crime in the Government to advance further in the matter of public free schools. I utterly deny it. Such an indefinite and vague clause will not satisfy the people, for they want something substantial. Don't put them off with generalities. If they ask for bread don't give them a stone; if they ask for fish don't give them a serpent; either let there be a system of public free schools established, or provided for at the first session of the Legislature, or if not at the second, or at least at the third session, or abandon it altogether. But do not leave it indefinite; do not dodge or avoid the issue.

"I am opposed to the report of the select committee for several other reasons. Amongst them I disapprove of the eighth clause. I was one of the minority who voted to retain the office of Superintendent of Public Instruction in the Constitution, for I believe that if we do intend to establish any system at all it is essential to leave the Legislature with the power at the proper time to place a suitable head over that department; but having first determined it shall not be kept up, you next provide for a Board of Education, consisting of the Governor, the Comptroller, and the Secretary of State, who have other important duties to perform, and cannot attend to this subject. I pronounce it a farce to say that these or any other State officers, burdened with other duties, shall, in connection with those other duties, attend to it. It is in effect to say that the duties are so unimportant that the Governor, Comptroller, and Secretary of State can, in their idle moments—after dinner, while smoking their cigars, perhaps when the other business of their offices is finished—can attend to this, one of the highest and most important duties in the State of Texas. We had better march up to this question like men and accept the proposition of my colleague from Williamson (Mr. Sansom), and have no schools at all, but the people don't want to be trifled with at this hour on this or any other question. Let it be said that there shall or shall not be schools.

"We have made great promises to the people, and when we leave these halls they will look at our work to see if we have redeemed our high sounding pledges. They may find that after all our stump speeches and our declarations here, that we have been just as faithless in carrying out our promises to them as the witches were to Macbeth. They promised him many things, and in one sense, performed their promises, but he finally said to them in the end, 'be these juggling friends no more believed, who palter in a double sense and keep the word of promise to the ear, but break it to the hope.' The people may say the same of us. Here we are asserting in good set phrase that we are in favor of free public schools, and a general diffusion of knowledge, and yet refuse to provide a tax for it, and refuse to put the system in operation. Do you believe that you can practice successfully such an imposition on the people of Texas? Leave it out altogether. Be silent on the subject; or if you will not do that, then put in the Constitution something that will work, for I do not see how this article can work. Say at least, that at some period, however distant it may be in the lives of men now living, we can hope that the State will take upon itself to assist in the education of her citizens.

"I desire to say one or two things more. I agree with my friend from Titus (Mr. McLean) that life is too short, and the age progressed too far for any man now to get up in an enlightened assembly and say that public education is not a public duty. Yet, to my astonishment, he had hardly taken his seat when my friend from Galveston, Mr. Flournoy, and the honorable gentleman from Calhoun, assailed his position, as if he had announced some monstrous heresy, and proceeded to argue that is no part of the duty of the State whatever to assist in the education of her children. I desire on that point to call the attention of this body to one or two authorities, not because I believe them important, but because of their particular application. One authority I propose to read from is Adam Smith; the other is Mr. Say. They are constantly being cited as authority here. And for the especial benefit of my friend from Williamson, Mr. Sansom, I will quote from the late Dr. Thornwell, one of the presidents of the South Carolina College, who stood during his life at the head of the Presbyterian Church in the South, a church that is in its organization republican, and relies for the spread of its doctrines upon the intelligence of the people.

"I call the attention of the House to these quotations; they are brief and remarkable, not only the language is remarkable, but they are the opinions of very remarkable men.

"Dr. Thornwell, in writing to Governor John Manning, of South Carolina, says: 'It is the duty of the state to provide for the education of its citizens. Adam Smith, who is opposed to the direct interterference of the Government in higher education, is constrained to admit that *the education of the common people forms an exception to his principle.* He says we should be as solicitous that our citizens should not be ignorant as that they should not be cowards. The whole passage is so striking,' says Dr. Thornwell, 'that I will be pardoned for quoting it.' He then quotes from Adam Smith as follows:

" 'But a coward—a man incapable of either defending or revenging himself—wants one of the most essential parts of the character of a man. He is as much mutilated in mind as another is in his body. The same thing may be said of the gross ignorance and stupidity which, in a civilized society, seems as frequently to benumb the understanding of all the inferior ranks of the people. A man without the proper use of the intellectual faculties of man is, if possible, more contemptible than even a coward, and seems to be mutilated and deformed in a still more essential part of the character of human nature. The more the people are instructed the less liable they are to the delusions of enthusiasm and superstition, which, among ignorant nations, frequently causes the most dreadful disorders.'

"Mr. Say, in his work on Political Economy, says:

" 'If the community wish to have the benefit of more knowledge and intelligence among the laboring classes, it must dispense it at the public charge. *This object may be attained by the establishment of primary schools of reading, writing, and arithmetic.* These are the groundwork of all knowledge, and are quite sufficient for the civilization of the lower classes. In fact, one cannot call a nation a civilized, not consequently possessed of the benefits of civilization until the people at large be instructed in these three particulars. Till then it will be but partially reclaimed from barbarism.'

"Sir William Hamilton says:

" 'All experience demonstrates the necessity of state interference in favor of education. All that Scotland enjoys of popular education above the other kingdoms of the British Empire she owes to the state; and among the principalities of Germany, from Prussia down to Hesse-Cassel, education is uniformly found to prosper exactly in proportion to the extent of interference and to the unremitted watchfulness of government.'

"These, sir, and hundreds more, might be cited to show the importance of public education. So much importance did the fathers of the Republic of Texas attach to the care of public education that it was one of their chief complaints against Mexico that she had failed to provide a system of public education, and for the diffusion of knowledge. Saying in their Declaration of Independence: 'It is an axiom in political science that unless the people are enlightened it is idle to expect the continuance of civil liberty or the capacity for self-government.' The fathers believed the refusal of Mexico to establish a system of public education was a sufficient cause for war, and they set this complaint side by side with the denial of the right of trial by jury, and everywhere in the State of Texas the principles of that Declaration of Independence have been honored and respected. I mean no disrespect to the committee in the remarks I have made about their report. I have the highest respect for them individually and collectively, and I believe they have done honest and good work—the best that could have been done under the circumstances—but their work can be improved materially.

"I have one remark to make regarding Section 3, and desire to say why I believe the substitute of my friend from Franklin should be adopted. The report of the special committee says in this section, 'that there shall be set apart annually *not more* than one-fourth of the general revenue of the State.' Under that section this tax may be as low as one-fiftieth or one-hundredth, or as high as one-fourth. I can conceive of a time—and it may seem amusing to some of the members here—when all our places will be filled in this hall with intelligent men demanding public education, and they may demand that all taxes be made higher so the one-fourth may be larger. Let it be increased or diminished to such an extent as the people deem necessary, and let the desire to have such taxes come from the people, and be regulated by the people.

"Just one single word more. There is a way of regaining the confidence of the people, and of placing before them an organic law they will adopt. It is by fairly and bravely marching up to this and other questions, and responding to the public sentiment. Let us draft a Constitution which will have emblazoned on its front page, 'low taxes and economical administration of the Government, free lands, free schools, free suffrage, and free speech,' and you will make a Constitution that will be adopted; but if you propose to drive off immigrants, cry down immigration, and shut the doors against public education, take my word for it, the people will tell you that they will have none of your work, and rightfully too. They will reject your Constitution, and turn their backs upon you and your work."

JUDGE REAGAN said he would, in his remarks, represent his constituency, and not his own views, which he did not propose to discuss at all. He said he would support the report of the committee, believing that the people were too poor to bear a greater tax than one-tenth of 1 per cent. That had been the sentiment as expressed during the canvass in his district.

MR. MOORE asked why Judge Reagan had proposed to reduce the poll tax from $2 to $1, which would reduce the school fund to the extent of $200,000.

JUDGE REAGAN replied because it was an unusual tax, and the people were opposed to unusual taxes.

JUDGE BALLINGER said that in Mississippi the poll tax was as high at $3 and that the citizens of Nevada paid a poll tax of $2.

JUDGE REAGAN replied that there were gold and silver mines in that state, and the people had not had their property destroyed and confiscated as the Texas people had.

MR. MCCORMICK said he wanted to know what property had been destroyed and confiscated in Texas.

JUDGE REAGAN said he referred to the loss of negro property, and to the general suffering occasioned by the Civil War.

MR. RUSSELL, of Harrison, spoke in favor of public schools.[90]

He said: "Mr. President, deeply impressed with the importance of the subject under consideration, I am not content to simply cast my vote, but feel constrained to say something in behalf of popular education. This question has been thoroughly canvassed in the State, and at no place has it met with serious objection. Gentlemen have asserted on this floor that the people are opposed to public free schools. This assertion is clearly erroneous, as in every instance where they have had an opportunity to speak on the subject they have, through their accredited delegates, pronounced in favor of free schools. In what precinct, county, district, or state convention of either political party have free schools been denounced? How are we to know the sentiments of the people upon any question, unless through the medium of their conventions? The political parties of this State have vied with one another to convince the people of the soundness of their views, the superiority of their patriotism, and the strength of their position upon this all-important measure. The Democratic party, in convention assembled, in September, 1873, representing every county and precinct in Texas, with perfect unanimity, pledged the people of Texas that, if placed in power, it would establish and maintain a liberal system of free schools. Mr. President, it has been placed in power. Has it redeemed and complied with that sacred pledge, which was prominent in giving it power? Was that pledge a fraud? The issue is made and the Convention must decide.

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[90] His speech was printed in the *State Gazette* (Austin), November 4, 1875.

"The press of the State, with commendable unanimity, are imploring this Convention to provide for free schools. Are we, sir, to turn a deaf ear to every reflex of public sentiment? Are we to blindly shut our eyes to the fact that ignorance is a curse to any country, and that the people are clamoring for its destruction? I hope not. The education of the masses is the imperative duty of the Government. Is it not a matter of public policy, associated with the life and existence of the Government, that they should be educated? Does not the State, taking into consideration the necessity of preserving her free institutions, of emulating the wisdom and patriotism of those who are marching on with advanced progress and civilization, demand this of her lawmakers? Who can deny the necessity of education? If the necessity exists, a remedy should be provided. If the remedy is without the power of the parent or guardian, then, in that case, Mr. President, the State of Texas, in consideration of her own greatness, of those now sleeping in the tomb who fought and shed their life blood for her ever memorable past, who, by their own blood and sufferings established for her a glorious and envied future; who consecrated their lives on death's camping ground, to redeem her from oppression and ignorance, ought to provide a remedy.

"Texas cannot afford to repudiate her glorious past, nor stifle and resist the demands of the ignorant and helpness *now;* nor can she, Mr. President, afford to coil the serpent of ignorance around the cradle of knowledge and damn forever, amid the wreck and ruin of all her past, her present, and her envied future. Not able to afford her own ruin she should, with care and watchful interest, provide against the ruin of her citizens. How is she to do this? The answer is plain and the duty obvious: Erect in every neighborhood public free schools—the tombstones of ignorance, the joy of the bright-eyed children of Texas, and the hope and comfort of the parent. The ingress of knowledge in our glorious land will be an egress of vice in an unlimited degree. Texas, by educating her children, makes of them good citizens, prepares them for the higher walks of life, inspires in them a love of country, and binds them gratefully to her liberties, her institutions, and her interests, for her kind beneficence.

"The parent is the natural guardian of the child, the State its legal guardian. To the mental and physical actions of the child the State, through her eleemosynary institutions, supplies its wants and administers to its infirmities. Is it not, Mr. President, equally incumbent upon the State to administer to its stolid ignorance, to its untutored and uncultured brain? If it is right, and the power exists to tax the people for the support of the eleemosynary institutions, it is equally right, just, honorable, and humane to tax them for the support and maintenance of her institutions of learning. The use or the necessity of the former depends, in a great measure, upon the encouragement the latter receives. The asylums of the insane would become practically useless, if the asylums of learning were increased and properly encouraged. The asylums for the felon and houses of correction for the ignorant and unfortunate youths would be in a great measure dispensed with, if they could but know the law, to provide against its infraction. If ignorance is a crime, it ought to be plead in justification of crime. Yet, sir, we are told in effect that we must encourage ignorance, the progenitor of crime, but we must condemn into infamy and ruin the results of ignorance. This is an unsound doctrine, bad policy, and above all disastrous to the interests of Texas and destructive of her fair name, which is dear to us all.

"Now, Mr. President, what resources has the State to provide for the education of her youth? The provision made in Section 2 of the majority report of a few days ago amounts to nothing—a mere myth. It cannot subserve the purposes intended. The public domain cannot for years be so utilized as to be of any practical benefit in maintaining public schools. Under the preëmption privileges incorporated in our Constitution, a ruinous speculative system is encouraged; persons, under the guise and pretext of being actual settlers, backed by a statute now in force, have gutted and continue to gut the best sections of the public domain, and in kind and gracious consideration for the ignorant of the State, leave the pitiful remnant for the support of schools. If in this domain the State entertains the hope to so utilize it as to make it of substantial value, and by it to create a fund of some magnitude that will be sufficient to educate her youths, she should abolish preëmption grants and subdivide every alternate section and dispose of them as her interests dictate. Speculators are preying upon her domain in the guise of actual settlers. This should be stopped, and no such subterfuges as have been resorted to by pretended settlers to butcher the domain of the State, should longer exist. This Convention will be recreant to its duty unless it provides for a disposition by sale of the public domain to actual *bona fide* settlers, men who will operate and utilize it, and none other. This, Mr. President, will create a splendid fund, and a perpetual one, for the education of the youth in the near future. It cannot be seriously contended that it can possibly be of any substantial and practical benefit now, the time it is so greatly needed.

"Then, sir, a plain duty addresses itself to this Convention. Is it competent for the task? Does it desire to give or establish a *bona fide* system of free schools for the education of the children? And will it provide for the raising of a *bona fide* and substantial fund for the support of such a system? Is this its object? Is this its desire? There is no compromise ground between its duty and authority to establish a liberal system of free schools to be maintained by taxation or otherwise, and the flimsy pretext that it will exercise doubtful authority in doing so. We must either declare, in no mistaken manner, in favor of a liberal system, with a splendid provision to maintain it, or abandon *in toto* the whole matter. Let us not have any pretended system that will act as a delusion upon the people in sugar-coating the ratification of our labors. But, sir, let us meet this question as its importance demands, and as will, if met properly, result in great good to the people of Texas.

"Our republican institutions rest upon the common intelligence of the people. Therefore, one of the highest duties of a republican government is the education of its people; for without education there can be no progress, as without intelligence there is no civilization. These memorable words, emanating from a distinguished friend of our institutions, should meet with a hearty approbation. The experience of our country teaches the solemn truth they contain, and it should be our highest aim to profit by them. In the ablest article on the subject of education which it has been my pleasure to read, the *Galveston News* very truly says, 'every mind was made for growth, for knowledge, and its nature is sinned against when it is doomed to ignorance. Education is to the intellect what muscles are to the principles of physical life. Government no longer exists for the benefit of the Governor, for the pomp and pleasure of a few, but for the good, the safety, and the rights of all.'

"This, sir, is the true keynote. The greatest enemy of our nature and faculties is ignorance. To be useful as citizens, to promote the good and safety of our institutions, and to protect the rights of all, we should train and cultivate the intellect for mental endurance as we would harden the muscles for physical endurance. We must educate if we will be free. We must educate if we will be enlightened, prosperous, and happy. Without these great essentials affording our protection, the demand for the liberties of the people will be as a sounding brass and a tinkling cymbal. If the provision in Section 2 in the report referred to is inadequate, surely Section 3 of the same report only in a very partial make-believe manner attempts to supply the inadequacy of its predecessor. Section 3 provides that not more than one-tenth of the revenue derived from taxation for general purposes shall be set aside annually, in connection with $1 poll tax, for a school fund. Now, assuming as a basis that the State tax is 50 cents on the $100 of valuation, and deducting from this 20 cents which is absolutely necessary to pay the interest on our bonded debt, there remains 30 cents for geenral purposes; one-tenth of this amount, and we have the abortionate sum of 3 cents, or a revenue of about $75,000, added to about 200,000 polls, with which to maintain a school system for our great and growing State. This sum will give us about one month's schooling.

"The majority report of the special committee, to whom was referred all previous reports and amendments, in Section 1 says that 'it shall be the duty of the Legislature of the State to establish and make suitable provision for the support and maintenance of an efficient system of public free schools.' This is all very good so far as it goes, but the question arises, for what length of time shall schools be maintained in each year? And when shall the Legislature establish the system? This report leaves an important feature in uncertainty, when it should have fixed at least a minimum number of months that schools should be maintained. The same objections raised to the sufficiency of the fund in Sections 2 and 3 of the majority report first referred to, will apply with equal force to Section 2 of this report, because the fund relied on cannot be made available now.

"Section 3 of the report of the special committee provided 'that there shall be set apart annually, not more than one-fourth the general revenue of the State and a poll tax of $2 on all the male inhabitants between the ages of 21 and 60 years, for the benefit of public free schools.' Assuming that the Legislature will set apart as much as one-fourth (when it will have the authority to set apart less), there will be realized only a fund of about $300,000 from the monied men and property holders, when by the same section there will be absolutely realized $2 from each poll in the State, making a fund of $400,000 to be drawn from the poor man. The true effect of this proposition is to wrench from the poor at least $100,000 more annually, for the support and maintenance of the schools, than there will be, under any contingency, contributed by the property holders.

"The main object of public free schools is to educate the masses; to instruct those who are unable, by reason of their unfortunate condition, to educate themselves; but if the persons sought to be relieved and provided for by a free school system, are to bear the burden, we should cease all efforts toward having a system. Believing, sir, that the burdens of government should be distributed, so as to bear equally upon all, I can come to no other conclusion but that this section is an ingenious device and attempt to oppress the poor for the benefit of the rich, to make the burdens of government fall with more weight upon a class less able to bear them. This report favors, 'a general diffusion of knowledge' and absolutely binds the Legislature to 'establish and make a suitable provision for the support and maintenance of an efficient system,' but fails to make such a provision, as will enable the Legislature to carry out its instructions. The right to tax is virtually admitted in all the reports, then the only matter left in dispute is the amount of funds necessary to establish and maintain a system. I think, sir, that I have clearly shown the inutility of Section 2 and the inadequacy of Section 3 in both of the majority reports. If this be so, then it is clearly the duty of this Convention to adopt measures for the utilization of the public domain as a perpetual school fund, and adopt the substitute offered by myself, which will raise a sufficient fund for the immediate establishment of a good and liberal free school system. It is no answer to the charge 'that we are opposed to free schools,' to leave the whole matter to the Legislature. We must not dodge the issue or in any manner shirk the responsibility of this important matter, which should receive the sanction of organic law.

"Our present organic law contains in the main a good system, and which was endorsed by a majority of 30,000 over each of the candidates for Governor. To deny this endorsement of the system, it is no answer to denounce the abuse of it. Under the DeGrees system, as it is termed, we had about six officials in the county; under the present management there are three trustees in each precinct, besides the directors, which amounts in some counties to near fifty officials. I have not adverted to these two systems in any manner to reflect upon their management, but only to show that the Consituation is not at fault in this particular, but that from the legislation under it has arisen the abuses we now complain of. Mr. President, if we by mature deliberation now perfect a good system, endowed by a sufficient provision to maintain it, the people of Texas will have, in a very short time, an opportunity to ratify or reject our work. To have our labors receive their endorsement, we should, without fail, provide for the schooling of their children. Let us not impose upon the Legislature duties appertaining to us. To do so would have the organic law framers occupy an equivocal position upon a matter of great public policy, affecting vitally the dearest institutions and interests of our State.

"Let us form the system and direct its operations; then no abuses can arise. 'That the Constitution of Texas shall never be so amended as to deprive any citizen or class of citizens of the United States of the school rights and privileges secured by the Constitution of said State' was the sacred compact entered into by and between the people of Texas and the Congress of the United States. A promise to comply with the compact determined our admission into the Union. Let us not break our pledge to gratify our prejudice. The Democratic party of Texas is pledged to free schools. It has been charged with being the party of false pretensions, particularly on this subject, and has often denied the charge. Will this Convention verify the charge? Or will it deny it? As the eloquent gentleman from Houston says that he did so on all occasions for and in behalf of his party, will it deny it? The Democratic party claims to possess all the integrity, intelligence, and purity of Texas (I, of course, take issue with such a terrible assumption of virtue), and I ask, sir, will it, in the name of integrity, violate honorable pledges? In the name of intelligence, will it suppress education? Will it, in the name of purity, encourage ignorance and vice? Pleading in behalf of free education, I beg of the majority in this Convention to stand by the 'time-honored principles' that elected their ticket in 1873. If it does not, the 'tidal wave' that gave their party-boat safe harbor in 1873, will strand it on the sand-bar of ignorance in 1875, and bury its wreck amid the causes of her defeat.

"The gentleman from Calhoun, Mr. Stockdale, and from Galveston, Mr. Flournoy, deprecate any action or control by the State of the free school system; they apprehend that the State will forcibly drag the child across the threshold of the parent into the school room, where the decalogue will be erroneously taught, where it will be imbued with erroneous ideas of religion and modes and manners of worship; where the parent loses control, and the child is reared and imbued with sentiments foreign to the teachings, care, and wishes of the parent. Sir, the answer to this is easy. Give the child a common school education, and he will himself learn and love the decalogue; he will form his own ideas of religion and mode of worship; he will learn the laws and obey them, in cultivating his intellect, he will appreciate his moral worth, in short, under the fostering care of the State, he will become a useful citizen, loving and admiring civil and religious freedom and detesting crime and vice in every quarter.

"The education of the masses will, in a great measure, destroy crime; it is the great civilizer of all countries. The gentleman from Nueces attempted to show that the statistics of Massachusetts exhibited an enormous increase of crime, notwithstanding her admirable system of education, and argued that to educate the people is no answer to the prevalence of crime. Surprised am I, sir, that this should come from so distinguished a gentleman from the West. Why, sir, only a few days ago, when an amendment was offered by the gentleman from Lavaca, Mr. Arnim, opposing further land grants to railroads and to other corporations, a general protest was made by our friends from the West! And especially, sir, did the gentleman (Mr. Murphy) denounce in no uncertain sound, such a policy; he contended that it would be ruinous to the West, that it would continue to sacrifice to the marauding desperadoes the dearest interests of the people, and the lives of the helpless and unfortunate. He wanted the railroads to aid in civilizing the far west, and be a means of driving back the savage and destroying crime. He claimed that railroads are great arteries distributing in their paths civilization, peace, and prosperity. Yes, Mr. President, they are, and to all this I add my humble concurrence.

"But, sir, I think the gentleman inconsistent, when, one day he advocates the civilization of the country and suppression of crime by the construction of railroads, and resists on another, the idea that the adoption of a system of education will also be a strong bulwark in aid of civilization, and of eradicating the evils arising from ignorance and vice. What is it that gives quiet and content to a community, but reverence and respect for the laws, caused by the enlightenment of the people?

"Several of the speakers have referred to the Prussian system of education and denounced it as alleged, 'that the Government arbitrarily directs the will of the people in their school affairs.' This, I conceive, to be a wrong impression. And while I am not thoroughly conversant with her system of education and laws, I feel assured to speak in her behalf in regard to one thing. Her people reverence and respect the laws. Why this respect and reverence? Because they are enlightened. Why is it they make good citizens and love with unbounded fidelity their country and its institutions? Because they are enlightened. Yes, sir, this is so. Whence comes this enlightenment but from her system of education and its practical operation? Go where you will over this broad land, and, sir, wherever you find a German or Prussian, you find a man who loves, honors, obeys, and respects the law, its officers and makers. No resistance of the law comes from them, but the same fidelity and love of country and its institutions that inspired and actuated the 'league of liberty,' in days gone by, to throw off the galling yoke of tyranny and ignorance now animates and glows within the bosom of every true German.

"In conclusion, Mr. President, I ask that we do not pursue a policy that will be a pretended system in our organic law, and such a fund as will be a myth in sustaining the system; but let us obey the promptings of humanity, actuated by a sense of justice and public policy, and provide a liberal and substantial system of free education to all the children, that the ignorant may become more enlightened, and in being so a proper reverence and respect for the laws will be diffused hand in hand with knowledge, the 'hand-maid of religion.'"[91]

MR. MCCORMICK said that in the canvass he had appealed to the white people to encourage education, so that those opposed to them in political principles might learn to appreciate their motives. He did not believe Texas was too poor to support a system of free schools; if so, why had they been inviting the poor from all countries and states, telling them of their generous soil and people and of their noble impulses? He said he held in his hand the Constitution of grand old Virginia, and where Mr. Reagan could find one dollar's loss in Texas he could find a hundred there. She not only lost three times as many slaves as Texas, but her soil was literally devastated and her sons butchered, and she was left with a debt of $40,000,000 and divided by the Republican party into two states; yet the grand old state had declared that not less than five mills on the dollar should be appropriated for educational purposes, and yet Texas, a young giant, was too poor to support a system of free education. He found himself in a peculiar position on this question, in agreeing with the gentleman from Harrison, and disagreeing with the old Democratic war-horse from Anderson, yet he was true to the Democratic platform of 1873 under the sign manual of the latter. He might tell his people the truth that he and they were too poor to favor the establishment of a system of free schools, but what could he say when they asked him if the gentleman from Anderson, and his people were too poor? Were they too poor in point of fact? Was the State of Texas too poor to educate her children in morals and a common school education? He argued that if that were so, there should be a provision in the Bill of Rights that immigration should never be prohibited from the State. Texas was richer than when she went into the war, and if the gentleman from Anderson and others would only keep a stiff upper lip and stand like men and give the people a good system of education they would make Texas an empire—not in government, but in wealth and intelligence, such as their children would be glad to look back to with pride, and say that their fathers inhabited the land. Should it go out to the people of Europe and the old states that they could not afford 25 cents on the $100 for free schools? He could tell them that it would do more to injure the prosperity of Texas than would all besides. It would injure them more than the defeat of the Constitution, which he considered would be one of the greatest calamities of all.

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[91] The Democratic press praised highly the above speech of Mr. Russell, Republican leader in the Convention. See the comments of the *Waco Register* in the *State Gazette* (Austin), November 4, 1875.

MR. JOHNSON, of Franklin, spoke next on schools.[92]

He said: "Mr. President, we have now come to the most important yet the most difficult question that has or will come before us. The value of public free schools is no longer an unsettled question, as the right to tax the citizen for educating the children of the State is no longer an open question. The one has been settled by the experience of the civilized world; the other was closed by a clause in the Declaration of Texas Independence. But whilst this is all true yet the object of the free school was so perverted for a term of years, and the taxes to support them have been so excessively burdensome, that the public mind has become, in some places, prejudiced against this system of education, and some good citizens made to question the propriety, yea, even the right, to tax the property of the State for this purpose. The tax created by the organic law of 1869 would have been oppressive in any probable condition of the country, but this, coupled as it has been for the last few years with the universal shrinking of all values, especially that of our principal staple commodities, has made a burden too heavy to be borne, even though attended with the most beneficent results; but unfortunately there have been no such following, for after a quiet submission to these hard exactions the people, at one period at least, were forced to the bitter humiliation of seeing their hard earnings squandered by the mismanagement of incompetent, or what may be worse, dishonest officials. With this condition of things, and this state of the public mind, what is the wise course to be pursued? The gentleman from Harrison, Mr. Russell, and some others, would persuade us to adopt and perpetuate the provision of 1869, promising that time will develop the most happy results, but we cannot forget that its operation has been so oppressive as in many instances to defeat its own ends, the parents not being able to spare the children for the school room, being compelled to keep them in the field to meet the enormous tax levied for this purpose. Shall we not prove equal to the great work of making the follies and errors of the past minister to the wisdom of the present in giving to the country some provisions for free schools that will now be and continue to be acceptable to the people? Further, this would indicate in us a want of the knowledge of adaptation, a culpable ignorance of all the surroundings. For, after all, the greatest evil resultant from the educational article of 1869 was not the hardships and inconveniences imposed upon the citizens without commensurate returns, but in the alienation of the public mind from the whole system of public free schools; it is easy to outlive its past evil, but how hard to outlive its future evil.

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[92] His speech was printed in full by the *State Gazette* (Austin), November 12, 1875.

"Sir, in offering this substitute for the third section of the article on education, I hoped to meet the wants of the country, to bring together the discordant materials here, preserve a great principle, and secure the approbation of our various constituents for being taken literally from the Constitution of 1845; with a small addition it will go before the country with all the prestige of that deservedly popular instrument. It simply provides for setting apart one-tenth of the annual revenue derivable from taxation with an additional $1 poll tax levied on all male inhabitants between the ages of 21 and 60 years, for educational purposes. The object of including this last sum is not so much the amount of money it brings, but the higher object of identifying every non-property holder with the school system, and as far as possible to give every child a home feeling in the school room. Now, sir, I confess this looks like a poor apology for a great system of free schools, yet it will bring a sum sufficient to meet the pressing necessities of the present, keep the whole thing in operation, while our institutions, laws, and customs are being gradually conformed to it, until all our resources can be husbanded and made available in building up the grandest system of public free schools the world ever saw, all left to future legislation to develop and perfect as future wisdom may dictate.

"The objection to the original section is, that it sets aside no specific sum; it does not positively commit the State to the principle of taxation for educational purposes, but leaves it optional with the Legislature to do or not to do. I would not say as some have said that this section is a fraud, for I think it not improbable that the first Legislature would make it conform to the substitute; but I will say that the speeches of some of its friends show plainly that the hope of its being operative secures their support, its chief virtue to them being its non-committal character. Sir, we must not forget that the right and duty of the Government to make some provision for the education of the children has ever been the settled policy of Texas. It was asserted as a principle in the Declaration of Independence; it was reasserted in the organic law by the patriots of 1845, and is it not more imperative now to vindicate that principle at a time when the gross abuses of the preceding administration have estranged the hearts of the people and made even the advantages of a free school a debatable question, when four years' incubation of corrupt officials on the school fraud has hatched the foul, pernicious dogma, 'no right to tax property for educating the children. A lodgment of this dogma in the public mind would be as a coiled serpent in the bosom; and I see it is already looking to this non-committal section in which to nest itself until fully fledged and able to fly to do its mischief. Sir, to gainsay the obligation of property to contribute to the development of the manhood that gives it protection is to gainsay the Divine law; to deny the gain to wealth from imparting its quota to the unfolding and beautifying of the mind upon which honesty hangs its own preservation. It is to fly in the face of destiny.

"Whence comes the greater part of the happiness of humanity? Is it not from good government, as the larger part of human misery, is attributable to bad government? Whence comes good government? Does it spring out of the ground? Is it a thing of chance, oı is it not rather the offspring of wisdom? Whence comes the wisdom that governs a republic? Is it not the aggregate wisdom of the whole people? Then is not every enlargement of the human mind by education an accretion of the great volume of the national wisdom, a preparation of the voter in embryo to meet with becoming fitness the delicate and solemn responsibilities, for the exercise of which he is to be answerable at the tribunal of patriotism? And is not an ignoring of this principle a silent acquiesence in the prostration of the future manhood that is to pillar the edifice of liberty, an indirect encouragement of the venalities of ignorance, an official notice that political intelligence and political virtue may be dispensable in a free government? Sir, a more damnable political dogma was never spawned in the midst of a free people. Sir, no wealth gives so big a part of itself for the happiness of the many as the wealth of mind. Whilst it is all important to husband the material resources of the country, it is far more important that the mind be fostered which is to control them, for without the proper control they may revert to a curse. History, ancient and modern, afford some melancholy illustrations of this; a nation rich in all the resources that contribute to the wealth of a people, has been precipitated to irremediable ruin for the want of mind to wisely direct those resources.

"No greater calamity can befall any country than the failure of its minds to keep pace with the increase of its material wealth. Such a people must sooner or later meet the fate of the man who, standing before the work of his inventive genius, maddened at the sight of its complicated machinery in motion, threw himself among its whirling wheels and was cut to pieces by the workmanship of his own hands. It would be sad to think that even at some far distant day such a fate awaits our own beloved State. Mr. President, I was astonished to hear the gentleman from Anderson (Judge Reagan) attack with such fierceness the proposition in the substitute to set apart for educating the children one-tenth of the annual revenue.

Does this opposition come from an objection to the principle of taxing property for educational purposes? He did not tell us, but told us of the great poverty of the country. This comes rather ungracefully from one who has advocated the highest salaries for State officials, extravagant appropriations for an immigration bureau, and all other so-called liberal measures. His eyes are now for the first time open to the waste places, and, as one in suffering, he points to the depletion of the country, crying that in the rural districts every place is empty, the corn-crib, the smoke house, the larder are all empty. Unfortunately the gentleman has stopped too soon. Had he gone into the dwelling and peeped into the trundle bed he would have found it right full. (Laughter.) He would have seen a sight that doubtless would have made him relent his opposition to a measure that looks alone to the good of these little fellows. Judging from his speech, I thought he had stolen the thunder of my friend Russell, of Wood; for we all remember when protesting against high salaries, how plaintively Russell told of the poverty of the people. On this subject he mourned for the gentleman, but he would not lament though he mourned as a turtle, and I in my own feeble way piped this music to him and he would not dance."

JUDGE REAGAN interrupted to say that he wished to tell the gentleman that his wife had arrived in Austin, and that he would need a guardian no longer. (Laughter.)

MR. JOHNSON: "Sir, I had supposed from some of the gentleman's votes and speeches that his guardian was still absent; however, the arrival is as timely as recent." (Increased laughter.) "Sir, I did not suspect that the dogma denounced was earthed in the gentleman's bosom. If I had, I should have sought to unearth it; but if his speech failed to do this, the language at least indicated a warm friend cooling. I would take this occasion to say to the gentleman that no remarks of mine shall show intentionally a lack of appreciation of his high character. I have ever felt proud of his high position in the councils of the nation, and when he was called to the cabinet of the great chieftain of the Lost Cause, I felt, in common with all our people, that Texas had contributed her best gift. Should I deal unreservedly with some of his remarks and acts, he will remember that it is not because I love him the less, but love my country the more.

"In answer to the argument based in the depleted finances of the country, I would say that this same sum was set apart in the Constitution of 1845, at a time in our history of unparalleled monied depression; when cows and calves were the principal circulating medium, and hides and peltries the chief staple commodities. This provision, which exacted specie payment, continued in operation for twenty years; yet with all the changes and vicissitudes of fortune attending those years, no Texan ear ever heard a protest against the administration of this law, for our people then saw, as if by intuition, that in a climate that ripens the human body to perfection as the soil pushes the plant to maturity, there must be a corresponding development of mind 'that nature be kept under foot.' Then if mental culture was a necessity in 1845, it will be now, and continue to be more indispensable as a greater exercise of the mind will be required to perform the duties expected and required of a man. In the language of another, and I repeat it with reverence, now and hereafter it is going to take more to make a man, for in this age of steam and labor-saving machinery it will require as much activity of mind to keep from being run over by the implements of trade and husbandry, as was needed a half a century ago to do the work.

"Public attention is being directed to the immense waste of labor from the lack of the mind to direct the muscle; from the want of wisdom to choose the best ends and adapt the best means for their accomplishment in the best way and at the best time. It is estimated that one-fourth of all our labor is wasted, spilt as milk on the ground. How is this leakage of human muscle to be stopped? The experiences of the age tell us by educating. Mr. President, we have been reminded by the gentleman from Harrison of the pledges of the democracy to liberal free schools. These pledges, coupled with one of the causes alleged for the separation from Mexico, no facilities for education by the Government, made him ask the question, 'Will you go back on your record,' singularly pertinent. It brings home to us a double accusation of betrayment, so that while the Republicans charge us with a violation of our own faith, the Mexican greaser can charge us with the stultification of our fathers. I ask, sir, can the corporations, the railroads, the monopolists, who have aggregated so much of the wealth of the country, afford to array themselves against the payment of this pittance to the State's children? Would it not be to say that they trusted more to the indulgence of ignorance than to the justice of wisdom? Is it, after all, an undue sensitiveness to their interest that compromits my distinguished friend to a course that so blots his conventional register? How illy does his course on this question accord with his zealous pleadings for high salaries and extravagant appropriations for an immigration bureau, salaries and appropriations that would have startled and shocked the public mind a few years ago. What is more strange is that it is discrepant with his life's history. We are told that in ancient days there was a great prophet who saw the future good as though it lay at his feet, yet in aftertimes his vision was more limited than the beast upon which he sat, and which grew irascible at the resistance of his will.

"Now, sir, when we were debating those measures that looked so extravagant to my friend from Wood, in his zeal he threw himself in the way of the gentleman, essaying, though not harshly, to stop him. Why, sir, he smote him as though he had been a dumb beast. Yet many of us thought that he might be the good angel of Texas with the naked sword in hand standing in the way, so plainly to be seen, that we hoped that a dumb beast (monopolist) might see and make audible warning.

"Mr. President, the gentleman objects to the latitude given by the substitute to the Legislature. In this we see but a continuation of the same inconsistency. When many of us were seeking to throw around that body wholesome restrictions in all cases where the seductions of power or the blandishments of money might be brought to bear in warping the better judgment, that gentleman, with others, asked indignantly if we thought that our election had exhausted all the patriotism of the country; a change of subject has worked an incredible abatement of confidence. Yet, in this case, no corrupting influences can possibly be used, as no seducements are in the hands of the poor children who are to be made the beneficiaries.

"Sir, in voting as I have done heretofore for all necessary limitations upon the power of the Legislature, I did so to meet the public expectation, to quiet the public mind, and to provide against possible contingencies. But I will now say what I have not said before. I have great hope in the lawmakers who are to follow us. If I read aright the politics of our country, which for a few years has been the cesspool of corruption, the foul receptacle of every unclean thing, will be for the future as free from corruption as any other department of social life. The great upheaving of political communities, the mighty ground swell of society has thrown up, and will continue to throw up to the high places the best and purest of men. The high character of this body today is a warranter of the character of those who are to follow.

"A class who passively acquiesced in being hewers of wood and drawers of water; a class, the larger part of the human family, who for ages past have been as dumb as sheep before the shearer dumb, and who might have continued dumb for ages to come had the shearers kept the shears in the fleece; but the piercings of the sharp blade beneath the skin hath broken loose the mute bound tongue, and a voice has gone out through all the land protesting against the wrong, and it comes up to the council halls demanding in tones of thunder that all legislation should be for the greatest good to the greatest number. A voice comes ready to challenge every hand that touches the reins of government unless warmed by the life current that flows directly from the great throbbing heart of the people. Sir, a young giant has sprung up from out of the dust that no Laocoon can strangle, whether it be in the form of a monopoly or of a subsidized press. Conscious of his swelling strength, he will speak to the enemy in the gate and bear a charmed life against the adversaries of the toiling, industrious masses, unless forgetful of his high destiny, his great mission, he should bow his broad young shoulders to take on selfish ambition and bear it to the pinnacle of power. Then when he lays the burden down, his strength will be gone, and like a great giant of old, shorn of his strength and sightless, he will spend the remainder of his days in toiling for the sport and profit of the enemy.

"Mr. President, in closing, I would ask those gentlemen who have been so long identified with the history of Texas, are you prepared to have this Convention erase a clause in the Declaration of Texan Independence? Are the people prepared for it? I received a letter a few days ago from one of our most distinguished educators, Dr. Burleson, who, from his identity with our early history, is as sensitive of our traditional glory as a Texan maiden of her honor. He tells me that, if we dare go back on the traditions of the fathers, the people will vote down the Constitution. Sir, we cannot forget—history will not let us forget—that when the Texan eaglet, its pinions baptized in the blood of the Alamo and Goliad, met the invader, at San Jacinto and shrieked defiance, 'no education for the poor' swelled that startling note of defiance that drove the hot blood freezing to the Mexican heart.

"Sir, while the gentleman from Marion was speaking of this treason to our fame, characterizing it as the murder of our national honor; as the burning words of eloquence fell like molten lead upon the heart, I almost looked to see the scene of Macbeth reënacted in this hall and some of the guilty rise up with dishevelled hair, exclaiming, it was not I that did it; you need not point your bony fingers at me. I would commend to some of these gentlemen an anecdote I read when a boy, perhaps in a speech of some great statesman, shortly after the death of the iron-willed Henry: The turbulent barons were assembled in the hall of the British Parliament; high words ensued as they talked of the encroachments of his weak successor, and one of the most refractory used words verging on treason, when an old baron rose in his place and said to him: 'Speak lower, sir, or old King Henry's bones will stir in the grave.' It may not be amiss to add that, besides the graves of the fathers, some of which are very near us, there are other graves at a distance, bloody graves unwashed by orphans' tears, that may be craving utterance. Sir, if a single one of the causes of separation from Mexico be invalidated, does it not open the question of the validity of the others, and make the supposition of a moral claim possible in that country? Will not the action of this body be talked of in Zacatecas and Durango and whispered in the dusky halls of the Montezumas? And may not the Mexican buzzard, hearing this, stretch out its black wings towards this once priest-ridden land, and whilst the children run for life from the falling of the dark shadow, croak more ominously than Poe's dying raven, 'never, no never?' "

MR. GRAVES said that even $3 a head for the scholastic population would not amount to anything for free schools. He said the people could not bear sufficient taxation to establish an eloquent school system. To establish free schools for one, two, or three months in the year, while it would be inefficient as a system, would destroy the private schools of the State.

MR. WADE contended that a public school system would be cheaper than the private schools. If the system could be localized it would present many advantages over the private schools. He was of the opinion that the Convention ought to trust the Legislature with the question.

GENERAL WHITFIELD said he believed that it was the duty of the State to assist in the education of every poor child in the State, but that to do so would cost a vast amount of money. He thought the gentleman dealt in generalities too much. He said no one would go further in aid to education than he. He would go to any extent they were able to bear. The original majority report would be offered as a substitute. With all due respect to the special committee, he had to say that their report was but a return to the old system of education which had proven to be such a failure. Let them do something. If they could not make it better, let them make it worse. It was useless to talk about keeping up the schools four months in the year, when under the existing system they could not be kept up for more than one month. He was speaking for himself and not for the committee of which he was chairman. He preferred to refer the question to the Legislature entirely, believing that coming fresh from the people it would be better able to determine what should be done. To keep up the schools four months in the year would require a tax of $1 on the $100. Unless they could come to that it was useless to talk about an adequate system of public free schools. It would require $2,100,000 to keep them running one year. Taking the total available school fund of $150,000, and adding thereto one-fourth of 1 per cent would make a grand total of $850,000, leaving a deficit of $1,300,000 to be raised to bring it up to the sum required. He did not think that his constituency should be prevented from taxing itself to bring up this deficiency if it desired to do so, and he would work for as high a school tax as any man in the country. He wanted it left to the Legislature. He wanted gentlemen not to generalize on the subject, but to come up squarely and toe the mark. At the proper time he said he would move to refer the entire matter to the Legislature.

## FORTY-SEVENTH DAY

### FRIDAY, OCTOBER 29, 1875[93]

### *Education*

The report of the special committee came up under the head of unfinished business.

MR. ARNIM spoke against the amendment offered by the special committee, favoring the original minority report.

MR. MOORE said none had yet spoken in favor of the report of the special committee. He said it was useless to say that not a single member heartily endorsed it. Members of the Convention seemed inclined to range themselves as partisans. Constitutions should not be arbitrary or consist of abstractions, but rather of something concrete, to meet the various independent minds in the Convention. A Constitution was in itself a compromise, and so was the report a compromise, so that their work might conform to the opinions of a majority in the Convention. He claimed that the issue had not been fairly made. The issue was simply whether the Convention felt authorized to destroy or promote a system of free schools, or would it pursue the more conservative course and leave the question to the people of Texas. The report was never intended to devise a system of taxation for that purpose, beyond the poll tax of $2. He estimated that the available fund from all sources would amount annually to about $720,000. According to the vote of the Convention they would have no Superintendent of Public Instruction. The amount specified would be sent to the various counties to apply to educational purposes, and would soon be augmented by their own county funds. The object of the committee was not to establish a school system, but to keep one alive and give it an opportunity to grow in proportion to the growth of the wealth and prosperity of the people. He denied that the school system was a failure. They had had losses in the executive and judicial departments, but there was no reason why they should not be kept up. He thought the same could be said of the school system. He was opposed to the idea of considering the school lands in the light of charity. Education in Texas should be as cheap as it was possible to make it.

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[93] The proceedings for this day were taken from the *State Gazette* (Austin), October 30, 1875.

MR. ROBERTSON, of Bell, spoke next against free schools.[94]

He said: "Mr. President, it is not my intention to enter into a discussion of the advantages of having all the people of Texas educated. The question as it presents itself to me, is this, was I sent here to increase the taxes on the people, or to tax them for other purposes than the regular expenses of the government? Is it a tax they are willing to assume for the great benefits to be derived from education? However it may address itself to other gentlemen on this floor, it is for them to determine, but it is for me to determine what my duties are in acting upon the question now before the Convention. I have come here, Mr. President, to levy no taxes on the people except such as are legitimate and necessary to carry on the ordinary administration of the government. This tax for school purposes, among others that have been levied upon the people, as I have said before, was regarded as an extraordinary tax. They looked upon it as an extraordinary tax in the past, and it was so regarded when the Convention first met. They still regard it in that light, and have not changed their opinion since I made the canvass among them. When I last held counsel with them their cry was 'relieve us from the road tax and from this iniquitous school tax, and keep the expenditures of the government to its proper administration of public affairs.'

"The question does not present itself to me as to whether we shall inaugurate a system of public free schools, but in the present aspect of public affairs the question is, however right it may be, are we able to sustain them? I take the ground that, however beneficial they may be in the end, the facts and figures will not warrant us in presenting to the country a system of free education, such as would be satisfactory to the friends of education on this floor, without increasing the tax to one-half of 1 per cent on the taxable values of this country.

"Let us go to the record. We have today as intelligent and efficient a Superintendent of Public Education as we are ever likely to have, not only qualified for the office, but thoroughly conversant with the duties of a teacher, and as well qualified to give advice and counsel in regard to the wants of free public schools as any one we may find through the ballot box, or any other source. In his report for 1874 you will find that a system to meet the wants of the country will require one-half of 1 per cent, and over, and he further recommends that superintendents be appointed over each county in the State, and to employ men not to keep school, but to teach it. Your low priced teachers will not give that attention the country demands. I repeat it, your superintendent says that you may get low priced teachers to keep school, but to teach it is a very different thing. This is honest and true, and when we adopt a system of education let it be one sufficiently beneficial to meet the wants of the country, something that will last throughout the coming years. This cheap teaching ruins many a scholar, and they have all to unlearn when they get into the hands of a competent teacher. It is much easier to take up a proposition originally and learn it from a teacher competent to illustrate and explain it than it is to unlearn the faults engrafted in the mind by bad teaching. This view of the case I believe addresses itself to every intelligent gentleman on this floor.

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[94] His speech was printed in full in the *State Gazette* (Austin), November 7, 1875.

"Much has been said with regard to the poverty of Texas, with respect to her capacity to sustain a system of free education. If we do attempt it, let us sustain it in an efficient manner, such as will meet the wants of the people; let there be no delusion about it; let us not deceive ourselves with a fraud, nor build up a system of instruction here that will not give a guarantee of education, and which will at the same time paralyze the individual enterprise that has sustained the schools and colleges of Texas by their own private means and energies up to this time. Let us not strike down the system we already have, nor disregard the desire for education that has been built up in the manly hearts of the people of this country. When the day arrives that this country is in a prosperous condition, and is able to pay the taxes that will guarantee an efficient system that will give a substantial education to every child in the country, I shall be prepared to support such a measure heart and soul. But I hold that we are now not able to do it, and that it is idle to force on the country a system that cannot be maintained, for as has been well observed by your efficient Superintendent of Education, you cannot sustain a system of public free schools without money. What is it proposed to do? Shall we give away all the money we have and that has heretofore been set apart for educational purposes and derived from taxation? Not only this, but it is proposed to empower the Legislature to levy a tax of not more than one-fourth of 1 per cent, and I believe their bill goes so far as to say that they may levy as much as one-fourth of the annual revenues to be devoted to this purpose.

"This matter is easy of calculation. According to the report of our present Superintendent of Education, we have 339,000 scholastic population in the State. I will assume that not more than one-half of that number attend school, and that will give us 169,500 children to be educated. That number will require over a million of dollars to be levied on the people annually by direct taxation, less the amount received from the public school fund. Our Superintendent of Public Instruction says that the increase in the scholastic population from 1873 to the first of May, 1874, was 43,610. In the calculation I had made, I had estimated the proportionate increase in the scholastic population at 25,000 to 30,000, but it seems that 43,610 was the actual number. With this enormous increase in population, are we prepared to say that we will fasten upon the people of this country a system false in its theory and principles, that will levy one-fourth of the revenues of this State, and which, even if it meets the demands of the system now, must be increased from year to year, in order to keep pace with the annual increase in the scholastic population. That increase is largely in excess of the increase in taxable values; it is equal to four to one, and the whole system resolves itself into this single question, how long will the people of this country be able to stand perpetually increased taxation without being sold out by public free schools?

"There is another little thing in connection with the amount of revenue which gentlemen propose to raise to carry on this system of public free schools to which I wish to call attention. Now what are the taxable values of the State of Texas? Let us say that they run to $250,000,000, but some gentlemen on this floor put it as high as $275,000,000. I do not so understand it, but estimating that there are $275,000,000 worth of taxable values in this State, not less than $139,596,000 of that amount was given in as real estate values. These values, it will be well to understand, are imaginary values, relative values, far beyond anything they would actually realize. Not only is this a fact, but there is an additional one in the fact that the real estate in Texas pays the owner less and he is able to realize from it a less sum to meet his taxes than is to be obtained from any other class of property. I apprehend, Mr. President, that it could be shown from the records of the Comptroller's Department, as compared with statistics from other states, that there are more land owners in Texas in comparison to the number of inhabitants who pay taxes, than in all other countries in the world. All the land in England today is owned by about 3,700 men. The $139,000,000 worth of land in Texas renders this people poor indeed. The people are willing to meet the ordinary expenses of the government, but beyond that they are not willing to go. If you accept this system to be efficient, you must have the money. Hence, if we are bound to have the money to sustain it, let us have such a system as the people can meet readily. Prompt assessments and prompt collections must be had at the hands of the government, says your Superintendent of Public Education, if you are to carry on this system, and without money you cannot carry it on at all. To raise sufficient revenue from the people for such a purpose is utterly impossible without amounting to a practical confiscation of all the property in the State. These are the facts and figures that should address themselves to our intelligence as practical men working for a system out of which it is proposed to derive some good.

"Then, Mr. President, it appears that we have only about $111,400,000 worth of property that yields revenue, and a good deal of that does not really yield it; but, for the sake of argument, I will assume that it does, and this reduces our amount of values fully one-half. We came here, sir, pledged to *reduce taxes*, and especially in the matter of schools. As the gentleman from Lavaca said yesterday, even with one-fourth of 1 per cent for schools, the people would be dissatisfied. They have complained of that. My object is to get something better still. I do not propose anything at this stage of the discussion. The question is whether we shall tax the people for the support of the free schools, or whether we shall cherish the fund we have already, to nurse it, for the purposes of education. I am willing to meet gentlemen on this floor on the ground of a compromise, but it must be one that our people can accede to willingly. When you give control to the Legislature in this matter, and say that not less than one-tenth shall be appropriated to educational purposes, you open the door of the Treasury wide, and they will be sure to spend that amount and more. I prefer a bill that would say not more than one-fourth. That is what we came here with. But I prefer something even better than that."

MR. MOORE interrupted to say: "There is no addition to that one-fourth. You recognize that provision in the Constitution of 1869, which demands that no further taxation should be imposed on the district. The minority provision required no less than one-sixth of 1 per cent on the $100."

MR. ROBERTSON continued: "I am not here to get up a discussion on the policy of 1869. It is no part of my purpose. The question is whether we shall be taxed now in 1875 and whether we shall say so in our organic law. Perhaps the country was prepared to do in 1869 what it did do; but we are sent here to prepare a Constitution for the present people of Texas, one that will be sustained fairly and freely. And we shall fail, I am afraid, unless we offer them such a Constitution as they can approve with regard to taxation. There is nothing they cry more loudly for than low taxes, and they will accept almost any Constitution that guarantees protection to life and liberty; but low taxes they *must* have. It is a necessity. Are we prepared here today to support a policy that insures an increase annually of taxation of 20 to 30 per cent, for such will certainly be necessary if you sustain your policy of educating all the children of the State? This question appeals to each and every one of us. I can speak only for myself and those I represent, and I trust this Convention is not prepared for an innovation of this sort or to fasten this burden on the country. I shall vote against the substitute of the gentleman from Franklin with a view of getting the substitute offered by the gentleman from Lavaca."

COLONEL CRAWFORD urged the necessity of free schools and, while admitting the extremely high cost, said he thought the State could not afford to be without them.

MR. MCLEAN replied to Colonel Crawford. He admitted the necessity of free schools as an aid to democratic government, and suggested that the proposition of his colleague, Mr. DeMorse, might be renewed, that freeholders of the various school districts should be authorized, where practicable, to tax themselves by a majority vote, to pay for a free school system.

The substitute of Mr. Johnson, of Franklin, was lost by a vote of 27 to 46.

The substitute of Mr. Russell, of Harrison, providing for a tax levy of one-sixth of 1 per cent, in addition to a fund of not less than one-fourth of the general revenue to be set aside annually by the Legislature, failed by a vote of 14 to 59.[95]

MR. WRIGHT replied to his colleague, denying the right of the government to tax one man to pay for the education of the children of another, and especially attacking the most vital clause of Mr. Dohoney's substitute—the right to tax property holders in a precinct, with a special tax for free schools, though this tax should be levied with the consent of the freeholders. He said he believed in no taxation without representation. He thought it would be outrageous to tax a man for the schools on land in a precinct where he did not live and could not vote.

GENERAL WHITFIELD'S substitute, proposing one-tenth of the annual revenue for schools, aided by such poll tax as the Convention might assess, failed by a vote of 36 to 40.

GENERAL WHITFIELD then offered as a substitute for Section 3: "The Legislature may provide for the levying of a tax for educational purposes, such fund to be annually distributed among the several counties, according to the scholastic population of each."

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[95] This was the most generous plan suggested for the free schools. Only two Democratic delegates joined the solid Republican delegation in voting for it.

MR. WAELDER offered to amend by striking out all after the word "levying" and inserting, "and the collection annually of not less than one-tenth of 1 per cent of all taxable property, and a poll tax of not more than $2, and if hereafter the tax of one-tenth should be more than necessary, the Legislature might reduce the tax accordingly."

MR. WAELDER spoke to his amendment, and denied that Texans were in that abject poverty which would send them out to the world as beggars. It was not the present system, he said, that the people objected to, but the way it had been administered under a former administration. He had never heard any objection to the apportionment of one-fourth of 1 per cent, but the people had objected to the 1 per cent tax to build school houses which were never constructed, and the money for which went no one knew where. If the people wanted public schools why should the Convention hesitate to give them assistance as was within easy reach, and such as the people were willing to contribute to? One-tenth of the revenues would be $300,000; a poll tax of $1.50 would be $300,000; there would come from the bonds of the school fund, $150,000; or a total of $750,000, which would keep up the public free schools four months in the year, according to the scholastic population, at $5 a head for that period.

MR. STOCKDALE referred to the remarks of Mr. West, as published in the *Gazette*, and also to the remarks of Mr. Russell, of Harrison, in which the latter had attributed sentiments to him which he, Stockdale, said he had never uttered. He said he had no idea that either of the gentlemen had intended to place him in a false position, and he wished only to put himself in the right light with the Convention. The remarks he referred to were as follows: "Why not say like the gentleman from Galveston—their present chairman—and the gentlemen from Calhoun and Williamson, that it was unjust, unlawful, and a crime."

MR. STOCKDALE contended that what he had said was that the original form of natural government was in the family; that nature made the government; that it made it in the family, and that the head of the family was the ruler of the family. Those who did not believe in the Almighty said that nature had done it. He believed that the Almighty had established the government, and that it was the only form of government he had established since the theocracy. He would say again that whenever that form of government was invaded for any other purpose, except for the punishment of crime, or to prevent the infringement of anybody's else's right, that it was tyranny. He had never believed, and never should believe, in the absolute sovereignty of the people. They were sovereign for the purpose of establishing civil government, but to say that all except one might perpetuate sovereignty over that one, he denied it. The first form of government he had reference to was the family, established by nature and, except so far as the state had the power to aid it, it had no authority to interfere in management of the family. Apply that principle to the subject of education, and he asserted that while education was a question of which the state must take cognizance, its duties originated in the necessity of the case and its powers were measured by its duties. Its duties were to give an opportunity for an education to every child whose parents were unable to do it, and when this was done the state had performed every duty and accomplished all the functions rightfully possessed by it.

The State of Texas might, as others had done before and continued to do, educate her indigent children out of the fund it had created for school purposes; but he denied that they could go further than that and educate all the children in the State. This being the logic of his argument, he deemed it fortunate that they had not had the means to establish an iron-bound system of education that would educate all the children of the State in one mold and make a unit of the people. He neither wanted to allow his children —if he had them—to be taught to despise the views of Confederate history, nor to teach the children of other people to admire them. He thought it was fortunate for Texas that she did not have the means to establish such a system as the Prussian. He would prefer to take the boy off the prairies with the moral education his mother would instill, for he was just as likely to make a good man and citizen as one educated under the boasted system of Prussia or Massachusetts. Massachusetts had a reputation for every vice repudiated by every principle of the decalogue, and, as was shown by statistics, there was less regard for those things held sacred by husbands and wives, who should be the parents of children, than anywhere else on the continent. It might be said that this was not the result of education. Perhaps not, but it was contemporaneous and must be remembered in connection with it when Massachusetts was held up for admiration as a model state. As regarded Virginia's support of free schools, it was the act of Judge Underwood, whose name stunk in the nostrils of the people, and not the acts of the people themselves, which established public education in that state. Mr. Stockdale replied to the arguments in favor of free schools, and said he was averse to putting the hand into one man's pocket to obtain money with which to educate the children of another man.

MR. WEST said he had not read the article referred to by the gentleman, but his own explanation had gone so far beyond anything he (Mr. West) could make that he did not feel disposed to retract any of his remarks. He said he had intended his remarks as a compliment to Mr. Stockdale and Mr. Flournoy, and not as a reflection on either. Let them make the issue as it had been presented. Let them engraft their views in the Constitution. Either let them have an apology for free schools or something tangible. They did not want something that was neither pig nor puppy; but if it was fish, flesh, or fowl, let them say so in the Constitution, so the people might know what they really meant. He did propose to put his hand in the rich man's pocket to educate the poor man's children, but what sort of a government was it that required the services of the poor man to protect the rich man's property from invasion, but formed a gulf between them when it came to asking to contribute to the support of free schools, that his children might be put on the same level as his own? He wanted no uncertain sound on that question, and hoped the Convention would let it be one thing or the other.

COLONEL FORD said that Mr. Stockdale was correct in saying that the family was the first institution of which we had any knowledge, but that his deductions therefrom were incorrect. He had spoken of the patriarchial system, but he had forgotten to tell the Convention that the patriarch had complete control of the family throughout the whole period of his existence. That form of government ceased when the family became too numerous, and another form had succeeded it. The gentleman had not carried out his deductions properly; he had left them too soon. He had told the Convention that the father had complete control over his children, that he had obtained from the law of God. He would direct his attention to the earliest system of which they had any knowledge, the laws of Moses, which required the circumcision of the child at the age of eight days. This fact showed conclusively that the government had some supervision of the child even at that early period. If the father was the head of a family by the law of God, it could not be alienated, and he would like to ask Mr. Stockdale by what right the child was taken from the care and protection of his father, and how and by what means it acquired that right. How could the law of man supersede the law of God? If the father had complete control of the child, how was it that the state could demand his services at the age of 18 years, and send him to the battlefield? Was the argument worth anything?

COLONEL FORD said he had yet to learn of any system of education where the parent would be denied the right to select the teacher, and this in turn regulated the right to select the books by which his children would be taught. He admitted that crime might be on the increase in Massachusetts. He thought it had been on the increase in all the states, North and South, and that it was mainly the effects of the Civil War, thousands of men having been unfitted by that struggle for the walks of peace. With mental culture there must be moral culture, and with the two combined man was made as nearly perfect as it was possible to make him. What it was proposed to do was to establish a system of education to give the necessary mental training and to leave the moral culture to be instilled in the sacred precincts of home. If it was not right to take money out of the pockets of the rich to pay for the education of the poor man, why was it right to take their money for the support of the deaf, dumb, blind, and insane, who might be said to have passed beyond the reach of the law and had ceased to be useful members of society? If so why could they not take the public money to teach the children of the poor man and to make them good citizens; for it would not be denied that that was a useful purpose. He believed that it would be admitted by all that education was the life and soul of republican government. He believed that the citizens who voted without a due regard to his rights, to that extent injured the perpetuity of free institutions. It was imperative to the making of good citizens just as morality was to the making of good neighbors. It had been said that it was not the intention of the men of 1845 to encourage taxation for the purpose of education. If they did not mean it it was a lie. But they intended what they had done to constitute a fund for the support of free schools, they intended to make education common and that it should take its place in and form a part of the government.

MR. BRADY spoke at length in favor of the Waelder amendment.[96]

He said: "Mr. President, so far I have been content to sit here and cast a silent vote, but on this question I cannot obtain my own consent to longer remain silent and especially since the declarations of gentlemen on this floor with reference to a system of education are so astounding. It has been asserted here—and I believe by men who were honestly convinced of the truth of the statements they made—that the public free school system is immoral in its tendency, and two of the honorable delegates to this assembly have cited Massachusetts, which has the most perfect system of free schools in this country, and have attempted to prove it by her criminal statistics, since that declaration was made—and I was so astonished at it that I could scarcely credit my ears when I listened to it—I have attempted to collect the criminal statistics of Massachusetts, to analyze them and to find where the crime comes from, for all of which gentlemen seem to hold the free schools responsible. In reply to this I read from the report of the United States Commissioners of Education. I find that in Massachusetts 80 per cent of the crime committed within her borders is committed by parties who have no education whatever. So that of all the criminals of that state but barely 20 per cent come from those who have been educated at all and 15 per cent of this class are those who can barely read and write. Following out the idea that public free schools are immoral in their tendency, I have taken the trouble to collect the criminal statistics of all the states where those schools exist, in addition to the statistics of Massachusetts, and find that in all these states the most alarming proportions exist between ignorance and education, so far as crime is concerned. In New York and Pennsylvania, we find that the system works in this wise: Taking 10,000 of the population of either of these states, there will be, according to the census of 1870:

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[96] His remarks are taken from the *State Gazette* (Austin), November 5, 1875.

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| People | 10,000 |
| Illiterates | 400 |
| Estimated prisoners | 40 |
| Prisoners illiterate | 35 |
| Others | 5 |

The "others" mean only a very common education.

"And now, lest it should be thought that the public free schools have failed in their duty, I will state that the statistics show in Massachusetts that 75 per cent of the crime is committed by foreigners and for whose education and morality Massachusetts is in no way responsible, and for the benefit of those who hold that public free schools are immoral, I will state that about 60 per cent of the above number have been taught the Roman Catholic faith, taught morals in that church; that is, taught morality, but without receiving any mental training. I state as a principle, which cannot be controverted, that education and morality go hand in hand together, and that if you raise the mental standard of the citizen you will elevate his moral standard in exactly the same proportion.

"Take the criminal statistics of France, a country controlled by the Mother Church, and whose people are taught morality by that church, and what do we find? We find that the same proportion of illiteracy to crime exists there only to a greater extent, than in this country, as follows:

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|---|---|
| Whole number of persons under arrest from 1867 to 1869 | 444,133 |
| Number unable to read | 442,194 |
| Average number of convicts from 1866 to 1868 | 18,643 |
| Number unable to read | 16,015 |

"In regard to another point of this question—if it is attempted to be proven that the public free school system is immoral—I will state that it is shown by the criminal statistics of the country that those states which have the best free school systems have the smallest proportion of crime—educated crime—crime committed, for whose criminal acts the system may be held responsible. I say go anywhere in the world, not only in New York, Pennsylvania, or Massachusetts, but in any of the Western States, and you will find that a large proportion of all the crime is committed by foreigners, who come to this country educated in the Roman system, but who have received no mental education, and I must say that I cannot conceive that it will be honestly contended by gentlemen on this floor that public free schools or any other system of mental education is immoral in its tendency.

"It must be conceded that education does not elevate the citizens and make society more prosperous and better adapted to attain the ends for which it was formed.

### *Public Free Schools versus the Private System*

"As there can be but two systems in education in existence, the one where the state assumes control of the education of its citizens, and the other where education is left to private enterprise, I will compare the statistics of Massachusetts in regard to illiteracy."

Mr. Sansom: "Will the gentleman confine his statistics to whites, leaving out the negroes?"

Mr. Brady: "That is exactly what I propose doing. I think this comparison is a fair test of the two systems, because the free school system has prevailed in Massachusetts for 200 years, while the private school system has prevailed in Texas from its first settlement down to the year in which the United States census from which I quote, was taken. In Massachusetts I find:

| | |
|---|---|
| Total Population | 1,457,351 |
| Native born | 1,104,032 |
| Foreign | 353,310 |

The illiterate of this State being:

| | |
|---|---|
| Total over ten years who could not read and write | 97,742 |
| Native | 7,912 |
| Foreign | 89,830 |

"I imagine that the gentleman from Williamson will raise his hands in holy horror at a system which allows so many of its people to go uneducated. It will be seen by these figures that taking the native born population of Massachusetts, there is but one out of 140 who could not read and write. Turn now to Texas and how is it? We have as follows:

| | |
|---|---|
| Total population | 818,519 |
| Native | 756,168 |
| Foreign | 62,411 |
| Colored | 253,475 |
| Native white | 502,289 |

We find the illiteracy of Texas to be:

| | |
|---|---|
| Total over ten years who could not read and write | 221,512 |
| Of these there were, colored | 150,617 |
| Foreign born | 18,369 |
| Native white | 52,576 |

"We find that one out of every nine of the native white population of Texas could not read and write."

Mr. Sansom: "I find the negro population in that year was 225,000."

Mr. Brady: "I quote from the census of 1870, and that puts it at 253,000, and I leave the gentleman from Williamson to dispose of it, if he can. These statistics show over 52,000 illiterates born in this country, for whose ignorance Texas and the private school system are responsible. If the gentleman desires it, here is a census itself, it having been handed me by the gentleman from Cameron (Colonel Ford). Go to any state where the public free school system exists and compare the native white illiteracy of that state with that of any Southern state where the private system has always prevailed, and you will find the same proportion in favor of the free school system. You will find that wherever the private system has predominated there is the same vast army of ignorance to be overcome, while in those where the public free school system is in force the proportion of illiterates is so small that it may almost be overlooked."

In answer to Judge Reagan, of Anderson, Mr. Brady stated: "The census gives more than 150,000 colored who cannot read and write, it gives more than 52,000 native whites who cannot read or write; there are something over 500,000 native whites in Texas and this makes the illiterates one to every nine of the native whites."

MR. KILGORE: "Were they all natives of Texas, and why did you take Massachusetts as a basis?"

MR. BRADY: "I will reply to the gentleman from Gregg that I stated that this was the result of the private school system which has been in existence not only in Texas but in every state south of the Mason and Dixon line, and that it is the system of private schools I am attacking. I hold that system responsible and I make this proposition since I find that the United States census is in the House, that you may take any state where the public free schools have been in force and compare it with any state which adopted the private system and you will find the same proportion in favor of free schools. Take for instance Ohio and South Carolina, Indiana and Georgia, and you will find the statistics in favor of the states where they have free schools."

JUDGE REAGAN: "Do you find that there were about 250,000 negroes in Texas in 1870? I know that there were 212,000 blacks in Texas in 1860, and that there must have been over 100,000 more in 1870, and if we could get at the truth we should find that the number in the illiterate class must embrace a large proportion of those not taken in the census."

COLONEL FORD: "There were 182,000 negroes in Texas in 1860."

MR. BRADY: "Put it any way you please and it leaves something in the neighborhood of five to six hundred thousand whites in the State, and I take it that if there is anything wrong in the United States census, it touches other states as well as it does Texas. And now, to take up another question.

### *Sparse Population and Public Schools in Texas*

"It has been argued by honorable gentlemen—the gentleman from Titus, Mr. McLean, I believe was the first—that Texas is too sparsely settled and the people too poor to keep up a system of public free schools. In answer to that argument, I propose to submit a few statistics from three states, Indiana, Iowa, and Kansas.

"Indiana has an area of about 34,000 square miles. In 1820 her population was 147,178, or between four and five to the square mile. In 1830 her population was 343,531, or between nine and ten to the square mile. In 1824 her public free school system went into operation and has never ceased from that day to this. Iowa has an area of 55,445 square miles. In 1840 her population was 43,112, or less than one to the square mile. In 1850 her population was 192,214, or between four and five to the square mile. Her public free school system went into operation in 1846.

"Kansas has an area of 81,318 square miles. In 1860 her population was 107,206, or between one and two to the square mile. Her public free school system went into operation in 1859.

"Now Texas has an area of 274,356 square miles, but the Commissioner of the General Land Office says there are over 107,000 square miles of our lands unlocated and unpatented. Deducting these lands, we have an area of 164,000 square miles left. Our population in 1870 was over 800,000, which would make our average between four and five to the square mile; while our population today is about 1,200,000, which would make our density of population between seven and eight to the square mile, and either is equal or superior to the densities of these three states I have mentioned at the time they put their systems into operation. It is objected to that the people of Texas cannot bear taxation, because they are an agricultural people. What in God's name, I ask, are the people of Indiana, Iowa, and Kansas, letting alone what they were in 1824, 1846, and 1859? But it is said that our population on the frontier is so sparse. Then, I say, make your system so flexible that it will work equally well in Galveston, Houston, and Comanche, or any other frontier county. It is easy to do this because it has been done in every state north of Mason and Dixon's line that has been admitted into the Union.

"The gentlemen say further, in reference to a system of public free schools, that a few years ago we had one and it taxed our people to death to sustain it. I admit that they were taxed too much for the benefits they derived from it, but I tell you, gentlemen of the Convention, that it was the cheapest system that has ever been in operation in this State, and that it was cheaper and better than the system of today. Go to the report of the Superintendent of Public Instruction and you will find that in the year ending August

31, 1872, the cost for the year for each pupil enrolled was $9.23, while the cost for the year for each pupil in regular attendance was $14.30, or $1.43 per month for each pupil in regular daily attendance. Well, the mistake of that system was in attempting to keep up schools in every neighborhood throughout the State for a period of ten months. This deprived that system of flexibility. If gentlemen will turn to the reports of different superintendents of education they will find that the average school term varies in each state, the highest being Maryland, with nine months and two days, and the lowest Tennessee, with one month, Massachusetts having an average term of five months and six days; this shows that her system is elastic, adapting itself equally well to the crowded cities and the most thinly settled rural districts.

"Another objection gentlemen make to a public free school system is that it resembles the Prussian system.

"I am compelled to say here that I have been surprised to find that no one who has attacked the Prussian system had any real knowledge of that system or of its workings, but seemed to think it some huge machine intended to crush out the liberties of the people. It is true that it is a state system, that the state has full control of it. General Hazen, in his work entitled 'The School and the Army in Germany and France,' says: 'Here (in the public schools) are taught the elementary branches including reading, writing, and the ground rules of arithmetic, and the history and geography of Germany. Religious instruction is also given.'

"This does away with the morality objection to that system.

"Mr. Kay, an English writer, says: 'There is nothing more untrue than that the central authority has all to do with the schools, that there is no local liberty of action, and that there is no union between church and school. The generally supposed oppression of the government in school matters has not the slightest foundation in fact. It is this simple parochial system which has been abused and vilified in every possible way. It has been called tyrannical, illiberal, irreligious, and has been stigmatizd by every opprobious epithet that ignorance and bigotry could invent. But the truth in the end will conquer, and Germany will one day be lauded by all Europe as the inventor of the system, securing in the best possible manner her education, guided by the best intelligence, fostered by local activity, local sympathy and the cordial sympathy of the Christian religion.'

"The gentleman from Williamson has stated that there is no state system of education in England and that she was more careful of the liberties of her subjects than we are of our citizens. Now from 1836 to 1869 there was over $1,000,000 expended annually by England in the cause of education in England, Scotland, Ireland, and Wales. Her system is not so perfect, it is true, as is the Prussian system or the American system, yet she is advancing; she has already adopted a compulsory law applying to London and other great cities.

### *The Cherokee Nation Ahead of Texas*

"I do not believe, Mr. President, that the people of this great and glorious State, as it is so often termed by enthusiastic gentlemen on this floor, want to be or ought to be outdone in the matter of education by that territory whose citizens are the descendants of those aborigines, who but a few years ago wandered through our forests and roamed over our prairies as savages. Yet it is even so. I read from the Educational Yearbook of 1873: 'Just as we are going to press, we get our official returns from the Cherokee Nation. We have also the annual report of the superintendent of public schools, Mr. S. S. Stephens, to his excellency Louis Downing, principal chief of the Cherokee Nation. The Nation has one chief, Mr. Stephens whose address is Talequah, C. N.'

"I think it would be a good plan for this Convention to write to him and get his ideas on education. The report says further: 'The Nation numbers 15,529, and the pupils in the schools 2,249. The annual school fund is the interest on $596,140. The superintendent of Choctaws—LeFlore—reports the total number of schools in the three districts, 69; the total number of scholars is 1,487. The Seminoles had in 1869, three schools in operation, with 169 scholars.' The Cherokees don't propose to abolish their superintendent of public instruction, as we so summarily did."

MR. MCLEAN: "How and from what is their school fund derived?"

MR. BRADY: "From the interest on their school fund."

MR. MCLEAN: "The fund was derived from the general government, I suppose."

MR. BRADY: "Well, we have a fund derived from the general government, and a pretty use we have made of it so far.

"Another objection that has been made by the gentleman from Galveston, Mr. Flournoy, and by the gentleman from Williamson, Mr. Sansom, is that the system of public free schools will do away with private schools.

### *Public Free Schools no Injury to Private Schools*

"I deny the proposition that public free schools are any injury to private schools. The history of every state where the public free schools have been established disproves the assertion. In these states the primary schools are free to all, as they should be, but the higher schools, colleges, and universities, are controlled by private parties. It would be better, I admit, if they were managed by the state, but this is not the case. Now, these institutions, so far from being injured by the free schools, receive fresh accessions from them every year. Indeed, it may be truthfully said that these institutions of higher education are fed and supported almost wholly by the free schools. And now when a great war is going on in other states over the public free schools, we appear to be of the same opinion as the Governor of Virginia in 1670. In that year the Royal Colonial Commissioners addressed to the Governors of the various English colonies a series of questions, among which was one concerning education in the colonies. The Governor of Connecticut answered that there was one-fourth of the annual revenue of the colony set aside for the support of free schools. Thus, over two hundred years ago, Connecticut laid the foundation of that admirable system of free education, which has had such a happy influence over her citizens that she has been called from time immemorial the 'land of steady habits.' The reply of the Governor of Virginia was: 'I thank God there is neither free schools nor printing here; I hope there will be neither these hundred years.' And his hope was well nigh fulfilled, for over two hundred years passed by before a free school existed anywhere within the borders of the commonwealth. And if this Convention does it work on this matter as well as it seems to be trying to do, it will be two hundred years before Texas will have free schools."

JUDGE REAGAN: "It might be that it was not indispensible to her prosperity that she should have them. In that hundred years ago she did more than any other state to illustrate the wisdom and fame of her citizens and of the country."

MR. BRADY: "This was a question I had hoped to avoid, but since the gentleman has made the issue, I am ready to meet it. There is no gentleman on this floor who feels prouder of the splendid record of Virginia the 'Mother of Presidents' than I do. There is none who acknowledges more freely and cheerfully her greatness and the wisdom of her sons; her unparalleled services during the War of the Revolution which secured American independence, but of late years she has produced none worthy to stand side by side with Washington, Jefferson, Madison, Monroe, and their compeers."

MR. MCCORMICK: "May I ask the gentleman where he hails from?"

MR. BRADY: "I hail from Indiana and am like the gentleman from Colorado in this, that I am not ashamed of my birthplace. I know that it is a common boast that nearly all of the great men come from south of the Mason and Dixon line. I know and admit the fact frankly and gladly that the South has, in spite of her private system of education, produced some of the most eminent statesmen, soldiers, and divines, that this or any other country can boast of, but there she stops. Never has she produced a great poet or historian, and only one man of science. Outside of him and the other walks of life I have mentioned, she has never produced a single, solitary great man. Why is this? It is the fault of the system of education adopted by the South. The public free school system of the North has produced as great statesmen, as illustrious soldiers, as eminent divines as the South, and in addition to all these, all the poets, all the historians, and all the men of science, save one, who have a national or European reputation; and we are told by writers on mental science and philosophy that the commonest forms in which the human mind develops itself are of war and statesmanship, of politics, or whatever name you chose to call it, and that the higher branches of mental labor are those branches in which the private school system has utterly failed to produce one worthy of the name."

MR. MCCORMICK: "Was that the reason why the gentleman himself went into politics?"

MR. BRADY: "Certainly it was. The same reason brought me here that brought the gentleman from Colorado—because I got votes enough, and I don't know any other good reason why either one of us is here."

MR. GRAVES moved to close the debate on the pending question, which carried.

Mr. Waelder's amendment was lost by a vote of 33 to 43.

General Whitfield's substitute was lost by a vote of 34 to 42.

## FORTY-EIGHTH DAY

### SATURDAY, OCTOBER 30, 1875[97]

MR. FERRIS offered the following as a section in the article on education: "Until the available school fund, including the fund derivable from taxation, shall appear sufficient for the maintenance of a system of free schools, such fund may be used for the support of public schools, which shall afford free tuition for pupils whose parents or guardians are unable to pay for tuition, in such manner and under such regulations as may be provided by law."

MR. FERRIS spoke briefly in favor of his amendment. He said he had been in Texas twenty-seven years. His children had been born in Texas, but had to be educated elsewhere. It had been promised him when he came to the State that education would be provided for the children, but twenty-seven years had elapsed and they were as far from obtaining education in Texas as ever before. It was true that they had private schools in the State, but he had never seen any worth a hill of beans.

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[97] The proceedings for this day were taken from the *State Gazette* (Austin), October 31, 1875.

MR. ROBERTSON asked if he had ever seen that of Bell County.

MR. FERRIS said he knew of that school by reputation, but if it was all that was claimed for it why did it not place its merits before the people and get the thousands of dollars annually expended out of the State? He was in favor of utilizing the fund they already had, which was ample to make a beginning. They had a school fund of $2,587,756. The interest on that would be not less than $150,000. One-tenth of the annual revenue would be $75,000. A poll tax of $1, as had been agreed to, would raise $200,000. That would make a total sum of $425,000 to be appropriated among the counties for public school purposes. On the basis of representation, Ellis County having one representative, her proportion would be $4,733, which would give her twenty schools in the county, and other counties of larger population would get more in proportion. The seventh clause provided for separate schools for whites and blacks, and both would get their just proportion. He said he was arguing for public schools and not free schools. Those who could pay would still pay, and it would be only the children of those who could not pay who would receive education free. Such a plan would be the beginning, at least of a system, and it would do more for immigration than a bureau.

His objection to the report before them was that it proposed to establish "free" schools, which it was utterly impossible to accomplish at that time. The system he had suggested had prevailed in New York, Indiana, and other states. He thought it would work out in a very practical way in Texas. His people objected to unjust taxation, but not to reasonable taxation. He had letters in his pockets from his constituents, stating that they did want public schools, and that they were willing to stand as high taxation as one-sixth of 1 per cent. If the Convention would establish a public school system, whatever defects the Constitution might have, that would overweigh them all, and they would receive the plaudits of the people.

MR. SCOTT moved to close the debate, and the House consented.

Mr. Ferris' amendment was lost.

The article was then engrossed by a vote of 55 to 25.

**GENERAL WHITFIELD** said that he desired to explain the vote he had cast on the article on free schools. He said it was known to the Committee on Education, of which he had had the honor of being chairman, that when he signed the majority report that it was understood with the committee that he was opposed to establishing as a rule that the Convention should restrict the Legislature on questions which the people had the right to change, alter, or amend through their Legislature, and that if the people had the desire to tax themselves for school purposes they certainly should not be denied that right. He said the article just engrossed was the old system which had been established by the Constitution of 1869, that had proved to be a total failure, so much so that a majority of the people had become disgusted with such a system, and that he was unwilling to return to his constituents with the same system they had when he left home. The present fund paid the teachers only one month out of four, and he was not willing to prevent the people by a positive constitutional provision from changing the free school system, and he, therefore, would vote "No."

### *Revenue and Taxation*

**MR. RUSSELL**, of Harrison, moved to strike out all after "dollars" in Section 1, which was as follows: "The Legislature may also, in its discretion, provide for levying a tax on the gross earnings and franchise, or either, of all corporations, or of any class of corporations." He held that this was in direct opposition to the first clause of the section, which said that taxation should be "equal and uniform throughout the State." He thought it was inconsistent and an unjust discrimination, and he protested against it. It was proper to tax them as individuals, on the valuation of their property, on their occupations and their income; but to tax them on their franchises and gross earnings was utterly unjust, and he hoped the Convention would not consent to do it. The franchise was included in their real and personal property, which had already been taxed, while their gross earnings had been taxed in their income.

**MR. MCCORMICK** proposed a substitute for the section, that all property should be taxed in proportion to its value, to be ascertained as prescribed by law; exempts $250 worth of household furniture; the Legislature might also impose occupation and income taxes upon such occupations and pursuits as it might deem to the interest of the State to tax, but prevents counties, cities, and towns from levying a tax on occupations and pursuits, but the Legislature might provide by law that such occupation or income tax collected by the State, or any part thereof, might be returned to the county for the benefit of the general county fund, provided it was collected from the county to which it was returned.

MR. FLOURNOY said that a franchise consisted of the right to follow a business just the same as he obtained the license to practice law, and should be taxed. They had said before that occupations should be taxed, and this was the occupation of persons engaged in the railroad business. The object was simply to secure the taxation of their business. How could they reach their occupation unless they taxed their franchise? It was simply a definition of their business. As to their gross earnings, he denied that it was their desire to tax them over again. What were their incomes? Did they wish to leave them without definition? How could they reach their incomes without ascertaining their gross earnings? Surely they would not consider the balance a man had after paying for the support of his family and the education of his children, to be his income. It was because they desired taxation to be equal and uniform, as was expressed in the first clause, that they had included the words "franchises and gross earnings."

MR. STAYTON said that the two sections were inconsistent on the subject and were unnecessary.

JUDGE REAGAN said he was of a similar opinion.

JUDGE BALLINGER said he thought it was horrible to say that a tax should be levied on the gross earnings and their franchises. It placed corporations entirely at the mercy of the Legislature.

MR. DEMORSE said he thought no elaborate argument was necessary to convince the Convention that the same rule should apply to corporations as to individuals. He thought the conclusion of the gentleman from Galveston had been adopted during temporary inadvertence or incomprehension of what the House was really doing. He hoped there would not be any considerable objection to striking out this clause, if it was deemed best that they should be taxed on their gross earnings and their franchises, and the Legislature should elect to do so, that there should be another clause inserted that the real and personal property of corporations should not be taxed. One or the other of these modes should be adopted, but he held that the first duty of the House was to strike out the clause referred to.

MR. WRIGHT said he was willing to adhere to the clause as it stood if he were positive that it would receive the same interpretation as was placed upon it by Mr. Flournoy, but he was afraid it would be open to misconstruction. He was opposed to duplicate taxation. He thought railroads should be taxed like other property, but no more.

MR. SANSOM offered to amend Section 2 by exempting from taxation "school houses and their necessary furniture." Adopted.

COLONEL CRAWFORD moved to amend the last amendment by inserting the word "public" before "schools." He said he thought the exemption should be confined to public schools. Large sums of money were invested in private schools. They were for profit, and ought to be taxed.

MR. ROBERTSON, of Bell, opposed the Crawford amendment. He hoped the Convention would not strike down private schools. It was well known that the people could not keep up a great system of free education, but they had that day adopted a proposition showing that they were desirous of doing something for the cause of education. But what would be said if they struck down private schools? The early schools of the country had existed in Texas for forty years, and, notwithstanding the adverse opinions of the gentleman from Ellis, he thought that they had done some good in the cause of education. He spoke of the MacKenzie Institute and Baylor University, and said that many of their most eminent statesmen and citizens owed all the education they possessed to private schools. He thought there were several men on the Convention floor who were indebted to private schools.

COLONEL CRAWFORD said that he was educated at MacKenzie University, but, though it was the work of a noble old man, it was that of a man who had put his private fortune in it for the purpose of profit.

JUDGE REAGAN said he opposed the Crawford amendment.

MR. WAELDER moved the following substitute to the Crawford amendment: "All buildings used exclusively and owned by persons for school purposes, and the necessary furniture for all schools shall be exempted from taxation." He spoke of cases where houses were used for schools, in whole or in part, which were used in part for purposes of profit, such as for merchandising or other pursuits.

JUDGE BALLINGER spoke of similar cases in Galveston.

MR. SANSOM said he was surprised at this objection from Colonel Crawford after the latter's sentiments had been so warmly and eloquently expressed for free schools, and especially because of his tenderness for the blue-eyed or blue-headed boys.

MR. FERRIS said he was in favor of exemption. He said he had been misunderstood in the morning session. He thought they could not depend upon the private schools, because they were insecure. They were up today and gone tomorrow. He admitted the great usefulness of such enterprises, and had worked for them as hard as any one. They were generally the results of associations of persons in a neighborhood to obtain schooling for their children. Even then the Waxahachie institution was languishing for want of support.

GENERAL ROSS moved to table both amendments. The motion was divided. Colonel Crawford's amendment was voted down, but Mr. Waelder's was accepted.

## FORTY-NINTH DAY

### MONDAY, NOVEMBER 1, 1875[98]

### *Revenue and Taxation*

MR. MARTIN, of Hunt, moved to amend Section 4, as follows: "The power to tax all the property, real and personal, of corporations, shall never be surrendered or suspended by act of the Legislature, but the same shall always be taxed as other property."

MR. DEMORSE said this matter had been brought directly before the Convention by a petition of the people of Sherman. The petition had been referred to the Committee on Taxation, and the committee had reported what they considered proper clauses to meet the case. The city of Sherman granted municipal subsidies to one railroad of $84,000 and to another of $50,000. The city was taxed to pay the interest on those subsidies, and one of the very railroads they had subsidized had reported only $10,000 worth of property in the corporation, while the other had reported none at all. While the city was being taxed for the benefit of the roads, the roads were not taxed for their property lying in the city. He thought that was a case requiring the attention of the Convention, and the committee had done its duty by reporting in the case. The ordinances were lying on the table, and if the Convention saw fit it could take them up and see what their merits were.

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[98] The proceedings for this day were taken from the *State Gazette* (Austin), November 2, 1875.

MR. MARTIN, of Navarro, said he failed to see any use for the section, and moved to strike it out.

MR. DEMORSE said he thought it would make little difference if it were stricken out, but if the gentleman would refer to the clauses respecting the city of Sherman he could see their direct applicability.

By motion of Mr. Martin, of Navarro, the amendment of Mr. Martin, of Hunt, was tabled.

COLONEL CRAWFORD moved to strike out all after "Legislature" and to insert "by any contract or grant to which the State shall be a party."

MR. SCOTT said he was opposed to leaving any power with the Legislature to exempt corporations. He reminded the Convention that the Legislature had exempted the International.

MR. STOCKDALE said that that had been done under a Constitution which gave the Legislature power to exempt by a two-thirds vote.

MR. SCOTT said they wanted to prevent the Legislature from exempting any other company by either a two-thirds or any other vote.

Colonel Crawford's amendment was adopted.

MR. ALLISON moved to amend Section 2 by exempting the veterans of 1836 from the poll tax, and from paying taxes in their first $2,000 worth of property, as might be prescribed by law.

MR. WRIGHT said he was opposed to the amendment, but would like to hear what Mr. Allison had to say in its support.

MR. ALLISON said the veterans were few in number. Some of them were in needy circumstances, and the boon would be greatly appreciated. Those who did not need it would feel gratified by the mark of consideration.

MR. ABERNATHY said he would support the amendment, but did not think that it covered the case. There were but four or five of the veterans then living. He spoke of the case of Mr. W. C. Crawford, one of the signers of the Texas Declaration of Independence, who was too old to pay poll tax and too poor to be benefited by the exemption on property.

MR. DEMORSE said he honored the motives of the gentleman from Panola, and appreciated the object of the amendment, but the effect would not correspond with the object. The larger portion of those sought to be relieved did not own $2,000 worth of property. It was desirable to avoid these exemptions from general laws as far as practicable, but there were veterans of 1836 who demanded the consideration of the people of Texas because of services actually rendered, and of extreme indigence and helplessness; but they were few in number, and he hoped before the Convention adjourned they would make some proper provision which would not impoverish the Treasury to any appreciable extent, and still show that republics are not always ungrateful. He knew the gentleman alluded to; and he was a signer of the Declaration of Independence. He had been a poor preacher who had never acquired property, and now was unable to make a living. He had proposed to offer a clause by which a number of the signers of the Declaration of Independence in actual want should be provided for. He had ascertained from inquiry that only three actually required assistance. The objection to the exemption from general laws was that it reached those who had rendered no actual equivalent in services. Under an act of the last Legislature a number of persons held $1,000 pension bonds who were not entitled to such relief. A large portion of them went out for a few weeks on Rusk's call in the fall of 1836, rode about two or three weeks, drove a few herds of cattle into camp, and then returned home. Many of these had pension bonds and ought not to have had them. He hoped the Convention would do something for those really worthy of it, and at the proper time he would offer something for that object, discriminating and relieving a small number of persons.

Mr. Allison withdrew his amendment.

MR. DARNELL moved to insert in Section 10, "but the Legislature may by a two-thirds vote authorize the payment of taxes of non-residents to be made at the office of the Comptroller of Public Accounts." He said it would be well to leave the matter with the

Legislature, so that if the people really wanted a change they might have it.

MR. RUSSELL, of Wood, opposed the amendment. Though an attempt to influence the Legislature might not succeed, the Legislature would be beset and harassed on the subject, and thousands of dollars would be wasted.

MR. ROBERTSON, of Bell, supported the Darnell amendment. He read statistics from the Comptroller's office, showing that there were 100,000 acres in his county owned by non-residents, and estimated the list of small land owners who would be put to inconvenience to pay their taxes at 30,000 people. He considered the expense they would be put to as a double tax. He protested against compelling the men who had fought for the country to travel to the county where their land lay, or to pay agents to represent them. He asked the Convention to pause, or the men would rise up in judgment against their Constitution and their acts.

MR. NUGENT opposed the amendment. He said that the assessment and collection of taxes ought to go together.

MR. DEMORSE said that he was wholly impassioned on the subject. He said Mr. Russell, of Wood, was mistaken in his suggestion that the effort to defeat the resolution was in the interests of the large land holders. He would vote in the minority and would continue to vote that way regardless of the size of the minority voting with him. He did not wish to have his motives misunderstood. If he thought that only the large land holders of the State were interested in the question he would not insist upon his view, for that class of people could always take care of themselves and could afford to give personal supervision to the matter. He had in mind a class of people far different from those. There were people in his own county who had on the frontier tracts of eighty acres, or perhaps one hundred and sixty acres. They were people whose daily necessities required daily toil, who had no business knowledge in a large sense, and who had no general acquaintance. These persons knew nobody where their land lay, and were compelled to scrape together their little means, send off enough to pay the tax and compensate an agent for so doing, thereby being compelled to pay in effect a double tax. Those were the people he wished to protect. He could appreciate the solicitude of his friend from Erath and men from other frontier counties. Such counties comprised large bodies of lands belonging to non-residents, and it was important to them to get directly and immediately the taxes due on those lands. But to do this no great harm should be done the owners, and no confiscation should be provided for.

## FIFTIETH DAY

### *Revenue and Taxation*

### TUESDAY, NOVEMBER 2, 1875[99]

MR. ROBERT LACY, of Leon, said he had voted uniformly with the majority on the article under consideration, but concessions had been made by the minority, and it was their duty to see that the rights of minorities were respected in their organic law. He had been struck with the number of persons who would be inconvenienced if Mr. Darnell's motion did not prevail. Twenty counties east of the Trinity would average 200 persons to the county who would be subjected to annoyance. It was true the proposition had been voted down again and again, but he did not expect to stand to his opinion in the face of the facts presented. The old adage was that fools never changed their minds, but that wise men did. If he was convinced he was wrong it was his duty to change his opinion. The amendment of Mr. Darnell was in a spirit of compromise which those voting with the majority ought to accept. It only left to the people, through their Legislature, the power of deciding whether they should pay their taxes in the county or at the office of the Comptroller. He ridiculed the idea that a Legislature elected by the people could be influenced by lobbying, especially to the extent of two-thirds of that body. Besides, the very importance of the question would induce still greater care in selecting their representatives.

MR. RUSSEL, of Wood, withdrew his objections to the amendment. He said it was now left in the hands of the people, who might correct by amendment if the plan was found to work injuriously.

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[99] The proceedings for this day were taken from the *State Gazette* (Austin), November 3, 1875.

He said also that many of the gentlemen now supporting the amendment had coöperated with him and his friends in many important measures, and hence he withdrew his objections in a spirit of compromise, and would support the adoption of the measure as amended.

MR. DEMORSE moved the following to come in after Section 9: "The Comptroller of the State shall prepare a list of all lands assessed or unassessed for each separate county, and assess upon the portion unrendered all present and back taxes thereon, and transmit to the collector of taxes the list prepared for his county, on which lands the collector shall proceed as prescribed by law." He said that every member of the Convention was hoping for the collection of a very large amount of taxes on property theretofore unrendered. The Comptroller was the only officer who could acquire all the information necessary for this thorough collection of the revenue of the State and the back taxes.

MR. SCOTT said the amendment would give to the Comptroller the duties which had been assigned to the county tax collectors.

MR. DEMORSE said that it had been the duty of these collectors for years to collect the back taxes on unrendered property, and they had not complied with their duties.

MR. FLEMING said that Section 12 would accomplish the same object that the DeMorse amendment proposed.

MR. DEMORSE replied that a vast body of land had never been rendered for taxation, and that the old mode of assessment by collectors had never reached it. The Comptroller, with the assistance of maps and other sources of information, would be able to reach it.

MR. RUSSELL, of Harrison, said he thought it would impose an additional and unnecessary burden on the Comptroller.

JUDGE REAGAN said that under the law of 1859 land could not be sold for taxes, except once in five years. He would support the new section of Mr. DeMorse, and thought it was an important clause.

MR. DEMORSE said he intended merely to reach such lands as had hitherto evaded taxation. Even if the same object were accomplished by the county assessor, no harm would be done, because his section had as its object to obtain all lands that had theretofore escaped taxation. He did not desire to force it on the Convention, but had offered it merely from a sense of duty.

MR. ROBERTSON, of Bell, said he regarded the DeMorse section as the most judicious which had yet come before the Convention. It was impossible for many assessors to assess many lands without information from the Comptroller's office. In former years the Comptroller furnished an abstract annually to the collector for the assessment of lands in the various counties. It was no new proposition and was now offered only to furnish collectors with whatever new information the Comptroller might have.

MR. WAELDER contended that the section clearly gave to the Comptroller power to assess both back and present taxes.

MR. DEMORSE said the gentleman's argument answered itself. It was only to assess taxes on lands which had been unrendered.

MR. ROBERTSON, of Bell, said that it had been customary for the Comptroller to be furnished by the Commissioner of the General Land Office annually an abstract of all lands patented. The custom had not been complied with for some years. The substitute would call attention of these officers to their duties. He saw no better plan to get all the lands taxed than by carrying out the law since 1850, requiring this annual abstract to be furnished.

JUDGE REAGAN moved to strike from the substitute the words "present and."

PRESIDENT PICKETT said that not only would the substitute apply to back taxes now, but ever afterward, and would thus defeat the assessment in the counties. All that parties would have to do was to render no lands for taxation in the counties, in order to bring it within the control of the Comptroller. This construction of the meaning of the amendment had probably escaped the notice of the mover. It was purely legislative in character too, and ought to find no place in the organic law of the State.

MR. DEMORSE said the President's argument would have a great deal of force if they presumed that the county collectors would all fail to do their duty; but if they assumed that the collectors would do their duty, the argument had no force. With regard to the legislative argument, he admitted that the Legislature could provide for the matter, but it had never done so yet. They had on so many occasions introduced legislative matter into the Constitution that that phase of the argument had little force. If the assessor did not do his duty the land owner would escape taxation, but his substitute provided a remedy for that contingency.

Upon the motion of Mr. Fleming, the DeMorse amendment was laid on the table.

## FIFTY-FIRST DAY

### WEDNESDAY, NOVEMBER 3, 1875[100]

### *The Judiciary Article*

MR. NORVELL presented his report as a substitute for the majority report on the judiciary. He contended that the latter failed to meet the wants of the country. Even the members of the committee signing it had not agreed to all its parts, but only to certain clauses of their report. It would fail to reduce the increasing business of the Supreme Court, which was accumulating at the rate of 159 cases a year. He objected to dividing the State into five Supreme Court districts; to a decision of nine men out of a jury of twelve being sufficient to find a verdict; to the fact that appeals given from the county courts to the district courts only on the record whose decision would be final, thus depriving the party of a trial by jury, and said the offenses appealed would consist of the largest proportion of crime in the State. He said there would be no uniformity of decisions, because the ruling of the judge would depend upon the conditions in his particular district, and his decision might be controverted by a neighboring judge.

MR. MURPHY said he favored the substitute. He regretted that the report had not been printed and presented in that form, because it gave the reasons for its presentment. He dissented from it in only one respect, which was in the amount of salaries, which he considered entirely inadequate to secure efficient judges. There was blame somewhere for neglect to print this report and lay it on the desk of the members.

MR. BROWN said the report would be there in one hour.

MR. MURPHY said it would be there one hour too late. He explained the advantages of the three judges of the Supreme Court, to the advantage of the Court of Appeals as in New York and other states, in the reduction of the number of judges. He spoke of a case in his own county where it cost the county $1,500 to pay a guard to watch two prisoners for a few months in jail. The minority report provided for the speedy trial of criminals, as the county courts would be open all the time for the transaction of business.

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[100] The proceedings for this day were taken from the *State Gazette* (Austin), November 4, 1875.

MR. DEMORSE said that having made a report he deemed it only necessary to say that the proposition of Judge Ballinger, the majority report, was an entirely fair one, and he considered it immaterial which report was taken as a basis of action by the Convention. He hoped, however, that the Convention would give attention to all the reports and examine each one fairly. He said he did not propose to make any speech urging the adoption of the report presented by him as a basis of action. One of its objects was to relieve the pressure of the business of the Supreme Court, and the other was to relieve the mass of the people of the very heavy burdens which they carried, from the expenditures necessary and unavoidable under the existing system. He thought that he had reported a system that would relieve the people in that respect, and all that he asked was mature consideration for it. He did not stand there to say that his report was superior to any other, but merely asked mature consideration respecting it.

JUDGE BALLINGER gave his reasons why the Norvell and DeMorse reports should not be taken as a basis of action by the Convention. The majority report was the result of the deliberations of twenty men, or one-third of that body, and, though the members of the committee did not agree as a whole to the majority report, yet each section had received a majority in its favor. In misdemeanors they said a party should not have the right of appeal, except with the consent of the judge. The extension of jurisdiction to $500 would also greatly relieve the district courts. He objected to the Court of Appeals proposed by the minority report of Mr. Norvell, as it was the same in effect as the Supreme Court, although it would be relieved of writing opinions.

Mr. Norvell's report was rejected by the Convention by a vote of 12 to 46.

JUDGE REAGAN presented eight sections of a minority report as a substitute for the corresponding sections in the majority report. He spoke in support of his report.[101]

JUDGE BALLINGER replied to Judge Reagan. He said the views of the latter had been presented to the majority committee with all his weight of argument, and respect for his opinion. He thought there must be something faulty in Judge Reagan's system, as he called it, or it would have met with greater confidence in the committee than it did. He thought the gentleman had gotten up greater enthusiasm on a smaller amount of capital in this matter than in any other case he had ever heard of. He had put the mountain in labor, and what had be brought forth? His system was to be the great panacea for the ills under which the people groaned. He said justices of the peace had had jurisdiction up to $100 only since 1845, but he, Judge Reagan, proposed to give them jurisdiction up to $200, and would give the Legislature the power to increase this jurisdiction to any extent.

The majority report gave justices of the peace all the jurisdiction they had ever had in this country except in one or two cases. They had jurisdiction hitherto only in petty cases. Judge Reagan had proposed to give them enlarged powers to such an extent that it seemed to him they would stir up strife among neighbors, in order to get costs. The officer who was the greatest nuisance, and did the most harm by stirring up strife to secure the small costs attaching to this office, was the justice of the peace.

In reply to Mr. Kilgore, Judge Ballinger admitted that the majority report did provide for an increase in the number of the justices of the peace, but it would confine them to their proper duties, such duties as the office was intended to cover. Was there anything practical in Judge Reagan's views? He did not think so. The remedy of the majority report was to try cases before a county judge and six men, and if they could convince him wrong had been suffered to carry the case to the district court on a writ of *certiorari* and to have a new trial. Judge Reagan's plan would grant a new trial in every petty case by carrying it up to the county court. Was this a proper time to incorporate a new régime? Was it the time to enlarge the jurisdiction of justices of the peace and turn them loose on the people? He thought not. He said he thought the scheme of increasing their jurisdiction from $100 to $200 would only aggrevate the evil, as it gave two trials where there should be only one. Again, with respect to the county courts, he proposed to give them jurisdiction from $200 to $500. The grand juries empanelled in the district court might inquire into and return a bill for a trial in the county court, but the majority report also determined to what extent the county court should have jurisdiction.

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[101] Judge Reagan was probably the most highly respected of all the delegates. It is a peculiar fact that no paper printed in full any one of his speeches in the Convention.

## FIFTY-SECOND DAY

### THURSDAY, NOVEMBER 4, 1875[102]

### *The Judiciary Article*

The judiciary article came up in the order of unfinished business. JUDGE BALLINGER continued his argument of the preceding day. He urged his objections to the county court system advocated by Judge Reagan. This gave it exclusive jurisdiction of all misdemeanors of which justices did not have jurisdiction. The majority report provided for cases where the justice of the peace was incapacitated from trying a case by ties of blood and personal interest, but Mr. Reagan's report did not, and if a justice refused to try a case it could not be tried at all. Was that sensible or right? He regarded it as a burlesque. He condemned Judge Reagan's plan of sending indictments from the county court to the justice court for trial. This was an anomoly; was such a thing ever heard of before? The majority proposed no such novelty, but provided that in cases where the county court could not try the district court should have jurisdiction. Judge Reagan's system gave exclusive jurisdiction to both the justice and county courts. The majority report gave county courts jurisdiction in cases involving from $100 to $500; Judge Reagan's plan gave them jurisdiction in cases of from $200 to $500. The majority report contemplated an enlargement of the jurisdiction of county courts, if it was found to work well, up to $1,000, and in criminal cases up to felony.

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[102] The proceedings for this day were taken from the *State Gazette* (Austin), November 5, 1875.

He objected to Judge Reagan's plan of making the district courts appellate courts by appealing cases from the county courts. The majority report contemplated that a party might make a statement of his case to the district judge—not upon the technicalities, but substantially, if he could show that he had sustained wrong. The district judge might say, 'send your case up here for trial and that will be a finality.' On the other hand, Judge Reagan's report allowed appeals on technicalities, on the record, and thus made it in reality an appellate court, and the case might be sent back to the lower court, tried again, sent back, and the process repeated interminably. The majority report gave the district courts criminal jurisdiction in all cases, and in all civil suits of above $100. Judge Reagan had objected that this plan would not relieve the district courts, but experience proved that it would. Their idea was that the county courts would determine all plain cases, suits for notes, etc., and cases where no technicalities were involved. The majority report was based on the Constitution of 1866 with respect to district and county courts. They had the results of experience in its favor, and nineteen cases out of twenty between $100 and $500 would be brought in the county court, because of its cheapness and prompt settlement of suits, for the district judge would permit no trial in his court unless he was convinced that substantial wrong had been done. Judge Reagan's plan said there should be no appellate jurisdiction to the Supreme Court for less than $500. He, Judge Ballinger, thought that the people would not submit to that, for suits for small sums might represent the complaint of a large class, and involve principles as important as those of a large sum. The majority report proposed to unburden the Supreme Court of Appeals in all misdemeanors except such as the Legislature might decide should be of an appellate character, and on which an examination of the record showed errors had been committed. Judge Ballinger then referred to the strong points of the Supreme Court as presented by the majority report, which, though elective, was so guarded as to secure a fair expression of the people's will. He thought that Judge Reagan's plan would surround it with all the evils of the political convention system. The majority report plan of allowing the justices of the Supreme Court to select their own chief justice would enable them to select the man who had the best administrative ability, and this would facilitate the rapid dispatch of business.

MR. NUNN opposed Judge Reagan's system and supported the majority report. He said the appeals from the justice courts constituted one-third, and in some counties one-half, of all the cases appealed. He condemned Judge Reagan's plan of "localizing justice." He thought this was the very thing that needed amending, for it was utterly impossible to secure the administration of justice if it was to be controlled by the passions and prejudices of a community in which the disturbing cause of action was to be decided where it originated. The majority plan had, too, an advantage in its proposition to relieve the district court from the gambling cases. He was opposed to paying the county judge in fees and to the increase of the justice's jurisdiction to such an extent as would induce him to stir up strife for the sake of fees.

MR. MCCORMICK moved to close the debate, which was carried.

JUDGE REAGAN moved a call of the House, which was carried.

The vote on the Reagan substitute resulted in a tie, the vote being 37 for and 37 against.

MR. WEAVER changed his vote from "no" to "yea," which made it 38 to 36, and the Reagan substitute was adopted as a basis of action for the Convention.

MR. MCCORMICK proposed a substitute for Section 2 of the report before the Convention (Judge Reagan's), which had been adopted as a basis for action. The substitute made the Supreme Court convertible, giving the judges alternate jurisdiction in civil and criminal cases; the judges were to be six in number and elective.

MR. DEMORSE proposed to substitute new sections for Sections 2, 3, 9, and 10. He said he was under the impression that nothing was to be gained by long speeches, as most members had made up their minds or would readily do so; hence he would speak a few words directly to his substitute. The system he had proposed had been maturely considered at least by him, and he proposed only to state its advantages. He supposed that nearly every member of that body knew that the object to be obtained in the election of a judicial system was to relieve the mass of the people from the burdens they were carrying, which were plunging them into debt and filling their jails and keeping them filled at the expense of the people of the counties. He desired a dual Supreme Court for this reason, so that when appeals in criminal charges come before them from criminal courts there should be a speedy response, so that the party might be either punished or released, and the county relieved of the burden of keeping the prisoner. Mr. McCormick had moved that the three judges should be convertible; that they should sometimes take charge of appeals in criminal cases, and sometimes in civil cases. He agreed with the gentleman from Colorado, only instead of making them convertible, as the latter proposed to do, he could select the judges with special reference to their capacity and fitness in civil and criminal cases. If it was thought that the convertibility of the judges would sharpen their intellects so that they would respond more readily to the exigencies of the cases that would come before them, he claimed superior advantages for his system, as the Supreme Court judges, three of them, would be selected with reference to their ability to act in civil cases, and three in criminal cases.

JUDGE REAGAN said that if the House adhered to its vote of that morning a dual Supreme Court would be unnecessary.

MR. DEMORSE withdrew his substitute.

MR. RUSSELL, of Wood, said he was in favor of three Supreme Court judges at a salary of $3,500, or at $4,000 if he could not get the former figures. He also favored twenty-five district judges at $2,500 each. He was in favor of the county court system advocated by Judge Reagan, and of an increase in the jurisdiction of the justice of the peace. He would oppose two Supreme Courts, or a Supreme Court of five justices. He was in favor of striking out Section 1 of the majority report, which favored the creation of criminal courts.

GENERAL WHITFIELD presented a substitute for Mr. McCormick's substitute and for Section 6 of the majority report. It divided the State into five judicial districts, each to elect a Supreme Court judge and five district court judges, with a tenure of eight and six years and a salary of $4,000 and $3,000 respectively.

MR. STOCKDALE said General Whitfield's proposition had been given a great deal of consideration by the committee, and was at first incorporated in the majority report. He had given a good deal of consideration to the question and should, if they were not in an anomolous condition, but in the condition they were in fifteen or twenty years ago, still favor the elective system. As regarded the appellate court, the matter had been very fairly stated by Judge Ballinger. It took the election of the justices of the Supreme Court out of the maelstrom of state politics, a great argument in its favor. If nominated by a convention it would be by a convention of men selected with special reference to the duty of selecting a judge. This system had been adopted in his native state, Kentucky, and in part adopted in the states of Illinois and New York, and had stood the test of time favorably. By that system four out of the five justices of the Supreme Court would be removed entirely from local surroundings in their election and decisions. In the district in Kentucky in which he had lived, a Democrat, who had made himself odious by his opposition to the Whig party, was elected over the Whig candidate by a majority of 5,000, and this notwithstanding the fact that the Democrats were in the minority in that district, but local feelings and jealousies could not operate over the whole district. It might be assumed that the principle would be reversed in the election of district judges, but it was not, as a man had to have character and ability such as would be recognized over the whole district, or he would not be elected. He alluded to the difficulties in the way of the election of judges in some localities, owing to the ignorance and prejudices of a certain class of the communities which ought not to control in judicial election, and said that by his method it would be placed out of the power of local majorities to elect men to the bench who were inimical to the interests of the state.

JUDGE REAGAN spoke in favor of the substitute.

MR. BROWN supported the substitute, saying that the same plan had been successful in Maryland.

MR. FLANAGAN said that if the gentleman from Lavaca had proposed a plan based upon high and statesman-like principles it would probably not have met with his opposition. The object was virtually to say to the people of Texas that no Republican should be elected judge of any district in the State. How much easier it would have been for gentlemen to have arrived at the matter in a cheaper and more direct way, by placing in the organic law a prohibition of the election of any Republican to the position of judge. He would much preferred to vote for it, for it would not look so much like whipping his Satanic majesty around the fallen timber; but they would have come squarely up to the question. He would have favored a provision that not only should a candidate for judge be well grounded in the law, but that he should have continued in it for twenty-five years, which would have excluded all danger that might have been apprehended from the colored man. He would go as far as anyone in presuming the purity and ability of the judiciary, but was utterly opposed to the substitute.

**MR. MCKINNEY**, of Walker, said it was necessary for certain districts in the State to be protected from a certain class of voters.

**JUDGE REAGAN** disclaimed the construction placed upon the substitute by Mr. Flanagan.

**MR. WEAVER** spoke in favor of the elective system.

**MR. RUSSELL**, of Wood, opposed the substitute.

**MR. WAELDER** opposed it on several grounds.

**GENERAL WHITFIELD** struck out the salary of the judges in his substitute, leaving it blank.

## FIFTY-THIRD DAY

### FRIDAY, NOVEMBER 5, 1875[103]

### *The Judiciary Article*

**GENERAL WHITFIELD** denied the charge of "gerrymandering" made by Mr. Flanagan with reference to his substitute, but said he believed if his plan could be adopted it would be a good thing for Texas. He said he would not give a fig for a party which would not take care of itself.

**MR. SCOTT** moved to print 200 copies of the majority report, including Judge Reagan's substituted sections, and the substitutes of General Whitfield and Mr. Davis, of Brazos, and to postpone consideration until the next day. His motion was carried.

### *Railroads—Third Reading*

**PRESIDENT PICKETT** moved to strike out of Section 2: "Railroads heretofore constructed, or that may hereafter be constructed in this State, are hereby declared public highways and railroad companies public carriers." It had occurred to him that the declaration that railroads were public highways ought not to remain there, as future legislation might use such declaration injuriously to the people. Taking that declaration in connection with the other declaration in the Constitution, that "taxation shall be for public purposes only," it might not prevent the Legislature from building railroads for private individuals at the public expense. Take the first declaration out of the organic law and it would be harmless.

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[103] The proceedings for this day were taken from the *State Gazette* (Austin), November 6, 1875.

MR. ROBERTSON, of Bell, said he considered railroads as public highways, and in another sense they were private, but he deemed it essential that the government should declare them public highways so it could control them in the interests of the country.

MR. FERRIS said that since railroads had to carry the cars of other companies they must be public highways. He did not see that it would affect the article at all either to strike it out or keep it in, but they could not compel roads to carry the cars of other companies without that clause.

JUDGE REAGAN said he was indifferent as to whether or not it should be retained, but would support the report of the committee.

MR. DEMORSE said he understood it to be public policy to consider railroads to be public highways partially but not wholly so. He thought it was a dangerous expression, and in that agreed with President Pickett. He thought it should either be stricken out or modified.

MR. FLOURNOY said he considered railroads as public highways and not private, except as to the ownership of property, which could not be controlled by law.

MR. STOCKDALE said he thought the proposition to strike out was the correct one, unless the language ought to be revised. He moved to insert after "highways," "to the extent provided in this Constitution and the laws of the State."

MR. FERRIS, Chairman of the Committee on Railroads, said he had no objection to Mr. Stockdale's amendment.

COLONEL CRAWFORD said he favored President Pickett's amendment. The Constitution of Illinois qualified the statement that railroads were public highways.

MR. DEMORSE offered to amend the section by striking out "declared public highways" and inserting "declared to be subject to public use."

MR. FLOURNOY said the clause complained of was a literal copy from the new Constitution of Pennsylvania, which was considered one of the best, if not the best, of the new Constitutions.

President Pickett's motion to strike out was lost by a vote of 35 to 33, lacking a two-thirds vote.

PRESIDENT PICKETT offered a substitute to both pending amendments, to insert after "highways" the words "so far only as to authorize the State to regulate and control them."

JUDGE BALLINGER opposed this as likely to interfere with the rights of individuals. If the Legislature only were to control them what right would an individual have who was injured or aggrieved by a railroad company? A large system of jurisprudence depended upon the fact that they were public highways, but if the Constitution said they were so only so far as the Legislature acted, then it might tend to restrain, abridge, or restrict the rights of the public as individuals He thought Mr. Stockdale's amendment was open to the same objections.

Mr. Stockdale's amendment was lost.

Mr. DeMorse's amendment was lost.

MR. STOCKDALE offered to amend the last part of the section by striking out "from time to time pass laws establishing" and insert "in the laws creating railway companies, or authorizing the construction of railways prescribed." Under the Constitution of the State and the Constitution of the United States the charters of existing roads, so far as they were completed, could not be interfered with by the Convention, except to regulate their charges and freights within the maximum limits. It was not within the power of the Convention or the Legislature to say that companies should charge less than when their charters were established. He had been told in private conversation that a charter was not a contract, but the court of last resort, with opinions from such eminent authorities as Chief Justice Marshall and others, was against that opinion. The construction of roads thereafter would depend upon whether or not the State could interfere and regulate their charges. Did it stand to reason that men would invest their money and allow the Legislature to come in and say what profit they should receive, and virtually to control the whole property? If so, they had foreclosed the future construction of railroads in Texas, and rung their death knell. His amendment advocated the same line of policy that had prevailed since Texas had become a state. They might—to use a homely illustration—as well say what profit the Capital Ice Company should make, as say what profit should be derived by railroad corporations. In the chartering of future roads the maximum rates should be fixed in an equitable manner, so that there should be a fair and honest understanding, so that when men put their money into an enterprise they should have the rights agreed upon. Without that guarantee there would be no further construction of railroads in Texas.

Mr. Stockdale's amendment was lost.

MR. ABERNATHY moved to close the debate.

MR. FLANAGAN said he desired to make a few patriotic remarks before the last nail was driven into the coffin, and hoped Mr. Abernathy would withdraw his motion. It was withdrawn.

MR. MARTIN, of Navarro, moved to amend by striking out all after "states" in Section 1, and inserting, "and every railroad in this State shall receive and transport the passengers, tonnage, and cars, loaded or empty, without delay or discrimination, of every other railway connected with it, directly, or through other railroad or railroads, for reasonable compensation, to be ascertained by agreement of said railroad companies, or in a manner provided by law. Every incorporated town and city in this State shall have the right to construct and operate a railway from a point in or near said town, to connect with any railroad in this State, with all the rolling stock thereon." He said he had consulted the chairman of the committee, and he understood there was no objection to his amendment.

JUDGE BALLINGER said he thought the amendment involved a sound and necessary principle. He was for cheap transportation in the State and not for doing injustice to any company, or for the exercise of doubtful power, for which, as a lawyer, he had great distrust. There had been a provision in the laws of Texas since 1854, providing that railroad companies should haul the cars of other companies at a price to be decided by agreement or by umpirage. If this could be incorporated in the organic law, he thought it would be a good thing. It was a great improvement upon the original clause.

MR. FERRIS said the proposition of Judge Ballinger had been submitted to the committee at the early part of the session. It had been favorably considered, and he thought it was provided for in the first part of the article. He should vote for the amendment, and hoped the rest of the committee should do so.

MR. FLANAGAN said if the gentleman from Navarro would turn to the first section of the Missouri Constitution he would find that it would probably cover the case, and was couched in more appropriate language. It provided that a larger amount should not be charged for a shorter distance than for a longer distance. He thought it would cover the case better than the proposition before them, and that it would be better and easier understood.

MR. ROBERTSON, of Bell, said the amendment went beyond the law of 1854. He was not opposed to restricting railroads as much as public necessity required, but did not think they had a right to impose on them obligations not contemplated in their charters or the law of 1854, and which were not essential to the public welfare. The provision in the amendment, and especially the last part of the clause, went beyond the old law, and he should oppose it.

MR. MARTIN, of Navarro, said his amendment was not intended as a restriction of the rights of railroad companies, as could be seen by a moment's consideration.

MR. STOCKDALE said if he had been more of a live railroad man than a sleepy patriot he should have been in time to defend his amendment from assault. As it was, he asked the poor privilege of having his name recorded as having voted for it. He did not apprehend that the State would be troubled with any more new railroads.

JUDGE BALLINGER said the amendment grew out of the Galveston Wharf Company matter, and was intended to cheapen transportation. It was not expected to fix arbitrary rates, but to allow reasonable rates to be paid.

JUDGE REAGAN said he feared that he did not understand the amendment, but as it appeared to him there would not be many towns and cities that would go into the building of railroads.

MR. STAYTON said he thought the first clause of the substitute should be adopted, but objected to the last part, in regard to towns and cities embarking upon railroad building enterprises. It did not even limit them to connecting with the nearest railroads. It was inconsistent, too, with the previous action of the Convention in limiting cities and towns in expenditures and the creation of debt. If they gave cities and towns the right to create railways, would it not also convey with it the power incidental to raise money for the purpose of paying for them?

MR. MARTIN, of Navarro, disclaimed any idea of allowing cities and towns to go into the work of building railroads, and said the amendment was merely designed to insure the carrying of their cars at a reasonable rate. Lest there should be any misapprehension concerning the matter, he would strike out the clause referring to cities and towns.

The amendment was put to a vote.

MR. FLANAGAN: "I ask the gentleman from Navarro a question. Does his amendment mean this: if you build a car and load it and put it on the track, you mean that it shall be carried to its destination by the company at a reasonable compensation to be agreed upon between the company and yourself?"

MR. MARTIN, of Navarro: "Yes, sir."

MR. FLANAGAN: "Then I shall vote 'yea.' "

The amendment was lost by a vote of 42 to 26, lacking a two-thirds majority.

MR. ABERNATHY moved the previous question on the passage of the article, and was sustained.

The article was then engrossed by a vote of 51 to 18.

MR. FLANAGAN spoke at length on a question of privilege.[104]

He said: "Mr. President, it is a privileged question upon which I propose to address this body, and I was going on to say that moving the previous question frequently furnishes gentlemen with an argument who would otherwise be without one, and is of course very useful. In their wisdom, these gentlemen have chosen to cut off all discussion on this question, one which I foolishly think the State of Texas has a vital interest in. Several gentlemen approached me while the vote was being taken on a call of the previous question, and said that I might have the privilege of addressing the Convention after the vote had been taken. I dislike very much to board any vessel after she has left the port. She is gone, forever gone, and the lost opportunity is gone and cannot be recalled. Gentlemen, you have killed and buried all future internal improvement in the State. Not only has a ten-penny nail been driven in your coffin here, but a twenty-penny nail has been driven in and clinched inside the coffin. When that article passed here, you virtually said to the railroads of the State, 'unless you come to the Legislature and accept the terms of this Constitution, you are forever barred from the privilege of general and special legislation.' On the other hand, how magnanimous you are. You say to them when you do accept the terms, you surrender all the charter rights which past Legislatures have ever made here under the Constitutions of the proudest State in the Union—charters which Texas in 1845 guaranteed to them, giving all the privileges they exercise today—you say to them when you come in you virtually surrender your charters. I ask you if this is the invitation and the feast you have prepared for the railroads of the State of Texas?

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[104] His remarks are taken from the *State Gazette* (Austin), November 6, 1875.

"I say, Mr. President, that when I came here as an humble member of this body, when I permitted myself to be elected a delegate to this Convention—for if I may be excused the term I was ravished into it, and that is the truth of the matter—I came here honestly and truthfully, for the purpose of voting for an organic law for all the people of the State of Texas, of supporting all measures that would make a good Constitution, looking to the interests of the whole people, and not of either one party or the other. I have on no question looked to the right or the left, have not asked if this thing or that is to the benefit of a Republican or a Democratic constituency, but simply is it for the best interest of the glorious and proud State of Texas. Our object was to reform the organic law of the State. All of us admitted that there were objections to the Constitution of 1869, and I was as honest as any of you in my desire to correct them. Will gentlemen please recall the speeches they made in the hustings? In the first place, they were for submitting amendments to the Constitution, and then your leaders thought it would be better to call a Convention, and it was called. Certain promises of reform were made in the following canvass, which gentlemen seem to have wholly forgotten. The result of your labors is not such as will tend to perpetuate your work.

"In comparison with the Constitution I hold in my hand—that of 1869—there are three monuments erected to the greatness and wisdom of that body which created it. The first is the article which provides for immigration, inviting those of other lands and countries to come to Texas, not only inviting them, but giving them a home when they get here and telling them that they should never be oppressed. Was that all? No, sir. You not only invited them here in that manner, but guaranteed that when they got here with their families that their children within certain ages should be educated, assured him that his children should be sent to school, and that the laws of the State provided ample means for the education of every child in the State within scholastic age. Was that all? No, sir. You said to that same immigrant and to that same father, after you have reached here and your children are educated we will furnish you with a railroad system that will not only furnish you easy transportation all over the State, but will carry you out of the State of Texas, and from thence to your native home.

"This is the proud monument, gentlemen, you are seeking to destroy, nay have destroyed, for you have taken it section by section and have destroyed the only bulwark of the Republican party. The last nail has been driven into the coffin which destroys internal improvements in the State of Texas. Have you acted like statesmen? I say you have not. I say that no man who has an idea above that of a swine, who reads of your doings here, but will say that instead of bringing capital here for the building up of your State, you have said to all the world north of parallel 32, you must seek another market besides Galveston, for we will not encourage you here. Tell me that discrimination is not allowed under the article, and I tell you that you are mistaken. I did not desire to see any article passed through this body that I could not go to the ballot box and freely and honestly vote for. But now I may say with the poet,

> "Take thou no scorn of fiction born,
> Fair fiction's muse to woo,
> Old Homer's theme was but a dream,
> Himself was fiction too."

and your action will prove the truth of it when the Constitution you have made goes to the ballot box, and we get the sense of the people of this State upon it. Try it and see if your humble servant is not right."

## FIFTY-FOURTH DAY

### SATURDAY, NOVEMBER 6, 1875[105]

### *Public Schools—on Final Passage*

MR. GERMAN moved to strike out the first clause of Section 4, which reads as follows: "The lands herein set apart to the public free school fund, shall be sold under regulations, at such times and on such terms as may be prescribed by law," and insert "lands herein set apart to the public free school fund, which are located in any county now organized, and whenever any new county may be organized, shall be placed upon the market and sold upon such terms as may be prescribed by law."

MR. RUSSELL, of Wood, moved to amend by adding to the section, "provided, that lands shall not be disposed of at a less minimum price than $1 per acre." Mr. German accepted the addition.

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[105] The proceedings for this day were taken from the *State Gazette* (Austin), November 7, 1875.

MR. GERMAN said the object of his amendment was to bring the school lands into the market at once in the counties that were organized and the proceeds of such sales, together with their available funds and their proportion of the revenue, would realize an annual disposable fund for the support of free schools of $2,500,000, which would run the schools six months in the year.

MR. ALLISON opposed the amendment. He thought the sale of school lands should be left with the Legislature, and not forced to completion in a hurry.

MR. NUNN said the matter had been referred to two committees who had carefully considered it. They had set apart one-half of the public domain and left it with the Legislature to utilize that fund. Now the amendment before the House was not for the purpose of promoting the interest of the school fund, but for the purpose of opening the lands to actual settlement by donating to every actual settler 160 acres of the public domain. He did not think the public school fund ought to be sacrificed in the interest of settlers. He was opposed to an injunction being put upon the Legislature to sell these lands as soon as practicable. Why abridge that power or restrict it? Was it possible they had no confidence in the Legislature, that they must lay down every detail of their line of duty for them? He said he thought the committee had acted wisely, and therefore hoped the action of the Convention would be allowed to stand.

MR. SMITH opposed the amendment.

The amendment was lost by a vote of 15 to 55.

MR. J. E. HAYNES, of Caldwell, moved to strike out the word "more" in Section 3, and insert "less"; also to strike out "one" and insert "two." This would necessitate the setting aside of "not less" than one-fourth of the general revenue of the State to school purposes, and would raise the poll tax to $2.

MR. DEMORSE called for a division of the subject.

MR. ROBERTSON, of Bell, opposed the amendment. He said it had been the settled policy of the Convention not to increase taxation beyond one-fourth of the annual revenue for school purposes. The condition of the country would not justify anything beyond that. The amendment would increase taxation up to the highest limit. If the amendment passed it would leave with the Legislature the power to go to the whole extent of the revenue for school purposes.

MR. SCOTT said he thought there was a majority on the floor opposed to the bill even as it stood, much less to the amendment offered by the friends of high taxation. He moved to table the first clause of the amendment.

MR. HAYNES said his reason for proposing it was the receipt of two resolutions from his constituency asking him to introduce it.

The first part of the amendment was tabled.

MR. MOORE said the last part of the amendment was not involved in the compromise that had been made on the question. He thought a $1 poll tax would not be sufficient to establish free schools. Mr. Reagan had intimated that he would willingly vote for a $2 poll tax, if he were sure it would be collected. He (Mr. Moore) had no fear of its collection, and it would be a relief to taxation on property. He was in favor of the amendment.

GENERAL WHITFIELD said he was opposed to the amendment. It was too great a task on the poor man, yet, if he believed that it would build up free schools, he would vote for it. But the school system was a failure and even with a dollar additional poll tax they would not be able to pay their school teachers more than six weeks in the year. With the county poll tax, which would be half of the State tax, it would run up to $2.50 or $3 a year, to come out of poor boys who earned only $10 a month.

MR. MCCORMICK said he had voted for every measure favoring free schools, but would not vote for this one. It would impose an additional tax on the honest poor man, while the man of property might evade it, and yet send his children to the schools. He would not vote for it unless non-payment would prohibit the attendance at schools, or the tax was made a prerequisite to voting.

MR. KILGORE moved to amend by inserting the word "two" in the amendment, "not to exceed," limiting the poll tax to that amount.

GENERAL WHITFIELD moved to table both amendments, and they were tabled.

MR. WADE moved to amend Section 3 as follows: "And the Legislature shall have power to levy an ad valorem tax on all property in the State of not less than one-tenth, nor more than one-fourth of 1 per cent, and a poll tax of $1 on all male citizens between the ages of 21 and 60." If a general diffusion of knowledge was essential to the preservation of liberty, he held that that was as little as it could be done with.

MR. SCOTT moved the previous question on the passage of the article.

MR. KILGORE moved a call of the House, and was sustained.

MR. SCOTT withdrew his motion, after some time had elapsed.

Mr. Wade's amendment was lost.

MR. MCCORMICK moved to add to Section 6: "And said bonds shall be deposited with the State Treasurer for safe keeping, subject only to the order of the proper authorities."

MR. MURPHY said a similar provision had been adopted, and Mr. Nunn confirmed it.

The amendment was lost.

MR. BROWN moved to amend Section 4 by inserting "provided that actual settlers on said lands shall have the same prior right to purchase as is provided in Section 6 of this article in relation to the actual settler on county school lands."

MR. MCKINNEY, of Walker, opposed the amendment.

MR. DARNELL replied, maintaining the policy of preserving to the settlers the rights accruing to them from settlement.

MR. ROBERTSON, of Bell, spoke in defense of the settler.[106]

He said: "Mr. President, the position assumed by the gentleman from Walker (Mr. McKinney) is entirely opposed to the policy that has always attained in Texas. I think with the gentleman from Dallas and the gentleman from Tarrant (Mr. Darnell) that if we mean to make these school lands valuable and of service to the State we must do it by drawing around these lands actual settlers and in encouraging those already there. From the earliest day to the present time the policy has been to encourage by grants of lands and other agencies actual settlers on an almost exhaustless public domain. But the question is asked, how is it that actual settlers have the preference in the disposal of these school lands? I will tell you. That preference arises by virtue of standing guard on the outposts of civilization, by cultivating the soil, and by defending it against your enemies. They are the men to whom you are indebted for quiet and peace in this hall today—the men who drove the savage and the enemy of Texas from the very soil on which this very capital is situated. The actual settler fought for the preference we would give him; he has earned it. He and his family have increased the wealth of the State, and especially of your school fund, have utilized it and made it valuable. Yes, Mr. President, and I, as a measure of finance alone, would be willing to divide these lands into eighty-acre tracts, and give every actual settler one of them on condition that he remained on it a given number of years and cultivated a given number of acres of land. Yes, I would that with a fund that I have always regarded as a treasured fund, but as a means of increasing it I would give every acre of the alternate tracts away to actual occupants—to actual settlers.

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[106] His speech is printed in the *State Gazette* (Austin), November 11, 1875.

"These men ask for nothing but what is right. The amendment does not propose to give the settler the land, but only relieve him of paying for the improvements, put there by the hard labor he has bestowed upon it; merely proposes that when it is put on the market at a fixed price, that he shall have the opportunity of buying it, in preference to the speculator who comes from far off states to avail himself of the labors of the actual settler. This is all the amendment asks. The same plan has been carried out with respect to the county school lands, and why not with the school lands of the State? The one bears the same relation to the fund that the other does, and presents the same advantages to the actual settler. The enhancement in the value of property from improvements is no greater in one case than in the other, and if they did not it would make no difference, as the lands are to be valued without reference to the improvements. This is all that is accorded to the actual settler for his toil and labor, and for the post of danger he has occupied and will continue to occupy so long as you guarantee him a home. Therefore, I say it would be a measure of great oppression to drive him from his home when he offers you the same price for your land as the new immigrant or speculator would give. What can be fairer? I trust, Mr. President, that the amendment will prevail."

MR. NUGENT said he would support the amendment.

MR. NUNN said he was opposed to taking from the Legislature the control of this question, and opposed the amendment.

Mr. Brown's amendment was adopted by a vote of 49 to 19.

MR. KILGORE moved to amend Section 5, after the word "schools," as follows: "But the Legislature may provide for the instruction of the scholastic population in private schools, not sectarian, in communities where public schools cannot be organized."

MR. CLINE opposed the Kilgore amendment. He said it would virtually prevent the establishment of public schools in the State.

The amendment was lost by a vote of 43 to 27.

MR. MARTIN, of Hunt, moved to amend Section 2, by striking out the word "one-half," and inserting "all." This would give all of the unappropriated public domain, instead of half, to the school fund.

MR. STAYTON opposed the amendment. He spoke of the great injustice of such a course to the sections which had no railroad facilities. The policy of the State had been to encourage means of internal improvements, but it was proposed to go back upon this. It would prevent any aid being given to encourage the construction of new railroads. It would be an injustice to those who had invested their means in these works. The public domain was the property of the State, and had been used for the aggrandizement of sections. If this amendment passed, a blow at the prosperity of Texas would be struck, from which she could never recover. It would lead to a division in sentiment and feeling of the people of this State, and when they ceased to possess that, it would be well that they remain one people no longer. If that division was to come, let it come, and let those who occasioned it be responsible for it. He moved to amend the amendment by striking out of Section 2, the words "one-half of the public domain of the State."

MR. STOCKDALE pointed out the effect of Mr. Martin's amendment. He said it would nullify the system it was proposed to inaugurate in the article on public lands and land office, for the settlement of public lands by giving to the settler a preëmption donation. This would preclude the donation of lands to that purpose as well as to those indicated by his colleague.

MR. KILGORE said this whole question belonged to the article on railroads and had been unnecessarily lugged into this article. He moved to lay both amendments on the table.

MR. STAYTON said there were but 60,000,000 acres of unappropriated public domain in the State. Taking out one-half for public schools would leave 30,000,000, which would be reduced to 15,000,000 by other provisions in the Constitution, and this was all that could be appropriated to works of internal improvement, even this was already monopolized by existing charters, supposing them to be carried out and the roads built.

Mr. Stayton's amendment was tabled by a vote of 47 to 21.

Mr. Martin's amendment was tabled by a vote of 57 to 8.

The article was then passed by a vote of 44 to 27.

## FIFTY-FIFTH DAY

### MONDAY, NOVEMBER 8, 1875[107]

MR. STAYTON offered the minority report signed by himself and Messrs. DeMorse and Whitehead, on the policy of donating lands to railroads; and as a substitute for the amendment and the section.

MR. STAYTON said he had no desire to take up the time of the Convention on this subject, and, in fact, he might say, that in the attitude which he believed it then stood, as a delegate he felt but little interest in the question. The proposition contained in the substitute then offered, was simply this, that the past policy of the State with reference to grants of lands to railroads to aid in their construction, should cease as to a portion of the State which had before received assistance; and that the policy should only continue with reference to that portion of the State which had heretofore not had the benefit of such donations. Why ask that the policy should cease as to the entire State, and that, too, on the isolated ground that one-third of the State had already received a quantity of land as large as the rest of the State was entitled to receive, a quantity as large as the State could bestow in the future on the remaining two-thirds of this State. There were members who did not, he thought, understand the action that had been taken on the public free schools, and that even the members of the committee did not understand the effect of the passage of the article adopted by the Convention. He understood it in this way, that we had already given away one-half of the public domain to the public free schools. He had always favored the policy of donating lands for public school purposes. Only 15,000,000 acres of the public domain were now left to the works of internal improvements, and as he had said before, if the charters already in existence were carried out not an acre would be left. The question of questions was whether the Convention would as an act of manifest justice do what it could with its remaining disposable domain, towards the construction of railroads in that part of the country. He appealed to their sense of fairness and justice and inquired if they were then prepared to say that one-third alone of the State should receive the benefits of works of internal improvement, and that two-thirds should be excluded. It would be condemned as an act of bad faith. He had his own convictions and opinions on the subject, and he thought he did not misinterpret the feelings of the people among whom he lived when he said that if they refused them what little they asked, it would be regarded as an act of gross injustice.

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[107] The proceedings for his day were taken from the *State Gazette* (Austin), November 9, 1875.

MR. ABERNATHY said he felt sympathy for the gentleman who had last spoken, and for his constituency, but thought it impolitic at this time to make large grants of the public domain for a reservation.

MR. NUGENT defended the majority report, and opposed the substitute.

MR. DEMORSE spoke in favor of continued land donations.[108]

He said: "Mr. President, this is a question of public justice. It matters not whether the sections of the State, which have had the benefit of donations of lands for railroads, have derived profit therefrom, or whether they have squandered them ruthlessly. It is sufficient that the sections now applying for aid think that these others have had benefits, and ask for a participation in the public domain which belongs equally to all. Mr. President, the people I represent are to receive no benefits from this amendment. They have had their share, but they are a just and fair-minded people, and would scorn to refuse to others the grants they have themselves had. Indeed, sir, I believe that all the people of Texas are just and fair-minded. Sir, it is within my personal knowledge that a large part of the services and endurance which secured the old public domain, was rendered by the people of Western Texas and but for them we should have no public lands to divide. If a demand for the division of the State arises, let there be no cause for such division furnished by our action. In the West the territory to be reserved—a mere reservation on paper, for not a foot but will be subject to location—by any genuine land certificate, this land is of such a nature as will never be settled, or ever become valuable, unless a railroad shall first have been constructed. The Southeast too, which has been benefited little by land grants for public uses, has a wealth of pine timber, now locked up for want of transportation. It is her greatest wealth. Railroads, which would carry this pine, sawed into lumber, to the North, the Northwest, the Southwest, and other parts of the country, would greatly benefit those sections, because it would be their nearest source of supply, and therefore furnish them the cheapest supply. At the same time it would enrich the Southeast from which it came.

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[108] His remarks are quoted in the body of the report of the Convention proceedings in the *State Gazette* (Austin), November 9, 1875.

"Mr. President, I have no instruction from my constituency upon this question, but these people only ask that in a possible contingency, if they should desire to build roads, and can find any land not appropriated, they shall have the same public benfits that have been conceded to other portions of the State, and, sir, I should feel that I would demean my constituency if I were to vote against such a proposition."

MR. WEST said that, in addition to being a member of the Committee on Public Lands, there were other reasons why he should speak. He represented in part a large portion of the territory west of the Colorado River, but apart from that the importance of the question itself justified the attention of the Convention to its consideration. In reply to the members from Erath and Camp, he denied that it was proposed to set aside an exclusive reservation of a part of the public domain for the benefit of railroad corporations in the west or to the exclusion of any one who had genuine land certificates. The substitute proceeded upon the principle of dealing equal and exact justice to each and every portion of the State. Nearly two millions of dollars of the school fund had been expended by loan in the building of railroads through Central and Eastern Texas. He made no objection to this, for the intent and design was originally that all sections should alike be benefited. It so happened that both in regard to land and money subsidies that the West, the Northwest, and the Southeast had not received any of the benefits it had been hoped and expected they would receive. It was only asked that those sections should receive some of the benefits of the policy inaugurated twenty years before. He differed from the gentleman from Erath and that gentleman would remember that there never had been any objection to giving subsidies of lands to railroads which were proceeding in good faith in the construction of their roads; but that up to that good hour since 1854, every Legislature and every convention except that of 1869 had perpetuated the policy, and the people condemned the Convention which did not by amendments to the Constitution it framed. Every Democratic convention had affirmed the same policy. Whatever was whispered about fraud and corruption had not grown out of land donations to railroads, but on the contrary they had increased the taxable wealth of the State and reduced the amount which the people would have to pay.

Their railroads had also brought into market the public lands and the lands held by private individuals, as well as increasing the value of the alternate sections for the benefit of the school fund. While the people of his district west of the Colorado had set their faces like flint against money subsidies, he believed that they and the people everywhere were unanimous in donations of the soil for the development of the resources of the State. He felt that in common justice to the West they ought to have the benefit of a portion of that which was still left. In order that the murmurs of discontent might be stilled, he hoped that this measure might be passed. He favored this measure together with other measures before the Convention, looking to giving them an equal voice in the administration of public affairs, in providing that the executive might call out the forces at his command to repel invasions from Mexicans and Indian attacks; and also to provide for the use of the Spanish language in the counties bordering on the Rio Grande, and the provisions for the protection of the stock raisers and the stock raising interests. These measures would hush the voice of discord. These measures were evidence that the Convention intended to deal wisely and frankly with the West. The State could well afford to give this land, although it would hardly serve the purpose for which it was intended; but if it was not given, and the West saw the whole of the public domain absorbed without any corresponding benefit to them, naturally they would clamor for something else.

MR. NUGENT asked if the same dissatisfaction had not arisen in the West on the refusal of the Legislature to grant a money subsidy to the International.

MR. WEST said that a portion of the people of the section represented by the gentlemen from Bexar and Hays, while not favoring the money subsidy to the International as an original proposition, regarded it as an act of justice to repeal it, but beyond that immediate section the desire was to put a stop to the money subsidy question.

MR. WAELDER confirmed the statement of Mr. West.

MR. WEST said there was another reason why the Stayton substitute should be adopted. All projected roads were from the East to the West. These would bring West Texas into connection with the eastern pineries, the lumber regions of the East, and supply them with most needed timber. The West was one of the earliest portions settled, but railroads had peopled the other regions and left them without increase. With railroads it would soon again become the most thickly settled portion of the State. After referring to the historic memories clustered about the West he again expressed the hope that the amendment would be adopted.

MR. STAYTON said that the Southwest was as much opposed to money subsidies as the other sections of the State were.

COLONEL FORD said that the policy of granting land subsidies to railroads had been adopted in 1854, and continued to be the policy of the State Government upheld by the people until 1869, when it was changed; but the people of the State by a solemn act reinstated the system. He referred to the endorsement of the subsidy system by different conventions of the Democratic party. He asked gentlemen who stated that the people had demanded that subsidies should be no longer granted to say when and where they had spoken.

He said that gentleman had insisted that the public lands should be set aside to be occupied by actual settlers. He said that from the earliest settlement of Texas to about 1850, say about thirty years, the policy of granting lands to settlers had been in vogue and what was the result? The census of 1850 showed a population of 212,592, and what had been the result of the subsidy policy? In 1860 they had 604,215 people, in 1870, 818,379, and now they claimed 1,500,000.

In 1854 they had not a mile of railroad, but now they had 1,560 miles, built at a cost of $64,000,000, thus adding that much to the taxable values of the State. Upon those lines of railroad property of every kind had advanced in value, and industrial pursuits had been encouraged and promoted. Was it not fair to assume that those results had been achieved by the railroad system of 1854?

The gentleman from Erath had said that there was no proof that the building of any road had been expedited by grants of land which had been located in the western part of the State. He had said that the country east of the Colorado had received 25,844 sections of land, and the country west of the river had received 2,009 sections—these were the official figures of Captain Groos of the Land Office on the fourth of October, and since then the number of certificates granted to railroads had been augmented.

He inquired of the gentleman from Erath supposed the railroad companies would incur the expense of paying for the certificates for said sections for surveying and patenting the same, if they were worthless. He said three companies had paid $69,632.50 for certificates. They had paid, or would have paid, $167,118 for patents, and $334,236 for surveying the alternate sections belonging to the State. The total paid, or which would have been paid for completing the title to 27,856 sections of land received up to October 4, 1875, was $570,716, all of which had gone into the Treasury of the State. In addition they had paid, or would have paid, for surveying 27,856 sections of land the sum of $334,236. Now, would the gentleman from Erath say, could he say, that corporations would pay out such sums of money for patenting lands which they could not sell or mortgage? Such a thing was hardly probable.

He argued that the railroad companies had found the lands valuable in raising money to build the sections just commenced. They had mortgaged their lands to obtain construction money.

In addition to the 25,844 sections of land, the corporations east of the Colorado had received from the State of Texas as a loan, $1,816,000. The people from West Texas had been open to the incursions of Mexicans and Indians. They had been murdered and robbed, hence they had not been able to increase in population, and had not been able to avail themselves of the law granting land subsidies to railroads.

The people east of the Colorado had received the full benefits of the subsidy law. Their railroads had been built, they had increased in population and resources; but was that any reason why the West, the Southwest and the Northwest should not receive their share of the public domain, which belonged in common to the people of the whole State?

The West asked for justice. Her people had been decimated by hostile incursions, but was that a reason they should not be fairly dealt with? He would support any measure which proposed to equalize the number of sections of land granted to different portions of the State.

MR. MURPHY called the attention of Mr. Nugent to the fact that the lands of the West would be without value if railroads were not constructed through them. They would not pay for their surveying for the benefit of the school fund. The good sense and intelligence of the Convention ought not to require an argument on that point. The best portions of the State were already selected. Mr. Nugent had inquired why railroads had not been built by land subsidies, and why money subsidies were not asked for. He (Mr. Murphy) replied that the West might justly ask for money subsidies, but the people could not bear further taxation, which was too high already, and hence they only asked for a portion of the land as a part of the contract they entered into long ago as citizens of this great State. Mr. Murphy then presented the facts and figures showing in what manner and to what railroads the school fund had been loaned to the amount of $1,816,500 in United States bonds and specie. And yet, with all this money expended in building up the eastern and central portions of the State, gentlemen hesitated about granting the aid of land to the West to construct railroads. It seemed to be held as a reproach that they had not asked for money instead of land. He spoke of the terrible condition of the frontier from Mexican marauders. If they could complete the construction of the railroad from the Gulf alone, it would be the means of saving hundreds of thousands of dollars to the State. Then, if they were to build further roads, they had to ask as a simple measure of justice that the policy of the State should be continued and the substitute of Mr. Stayton adopted.

MR. GRAVES voted against a continuation of the time of the gentleman, and Mr. Murphy resumed his seat.

MR. STOCKDALE said that as far as the section he represented was concerned and the people he in part represented, they had never asked anything of the Legislature and had never received anything which had not been granted to others and in greater abundance. No one from his section had ever asked more than sixteen sections to the mile, while other parts of the State had received more than that. Mr. Nugent had said that this policy had had its incipiency in applications to the Legislature by grants to corporations. The gentleman was utterly mistaken in his history. The policy originated when there was not a single corporation in the State that had money enough to buy a single member of the Legislature even at a very small price. It originated with the best men and the best hearts of the citizens of the State, by the Senator from Harris County, the late Judge

Palmer, whose character stood beyond the reach of any shaft the member from Erath or any other gentleman could hurl. He now slept in his grave, but his memory was revered by the best men among those who knew him.

The policy thus inaugurated was supported by statesmen of all parties in the State as divided then and divided since, and was organized for the purpose of putting on foot those enterprises in the hands of our own people and to thus obtain the assistance of the foreign capital necessary to build those railroads. The gentleman was utterly mistaken in supposing that the policy originated in corruption, for at that time, except upon one subject, the word "corruption" had never been applied to any member of the Legislature of the State of Texas. It was only in these latter days that such corruption had been charged, whether justly or not it was not for him to say.

Mr. Nugent had said that land donations and the encouragement the State gave to railroads did not build them, but that it was a settled country which built them. The gentleman did not know that the Texas Central marched in its first stride from Houston, which was a city of four or five thousand inhabitants, for fifty miles before reaching a settlement, and when it had built eighty miles it reached the borders of Brazos County, with scarcely any population at all. That territory now teemed with inhabitants, and its very prairies, which could have been bought then for four-bits an acre, had been made fruitful and alive with people. That road had developed Brazos County, and none could deny it. Cotton was not raised one hundred miles from Houston or Red River on the coast, before the construction of railroads; but now cotton was grown in immense quantities, and in regions which had been looked upon as useless, but which were now as rich as any in the United States.

The only road they had west of the Colorado River had been destroyed by the Confederate Government, while it did all it could to protect, and did protect, the roads east of that river. The owners of the former had since paid the United States Government $50,000 or $60,000 for its recovery in bad condition, and for the simple reason that they hoped that it would attract capital and enable them to complete a long line of communication from Matagorda. The immigration there—most of it—came from the coast, and his section received a fair share of it, but the railroads took it away from them, and having none of their own, they had not received the benefits that other sections had. After the war the policy was inaugurated of donations of land and then of money. Commencing east, as it properly should, it was believed that by the extensions of these roads to the Rio Grande the West would receive her proportionate share of the benefit to be derived from them, but that was stopped by the objection of the people to money subsidies.

By the compromise which was finally agreed upon, the country east of the Colorado acquired all the benefit, and the West none. It was doubtful if the International would ever be constructed west of that river, hence it was very dubious if she ever would receive any benefit from the policy that had so long prevailed, unless the Convention passed the substitute of his colleague. So, in a desire for a spirit of unanimity to prevail among the people of the State, for it is wise statesmanship which leads a government to draw the hearts of its people to itself by equal justice to all sections—he hoped the substitute would be adopted. He referred to the feeling of discontent that prevailed and inquired if it would not be wise to suppress it by doing justice to the West.

MR. GRAVES objected to extending the time of Mr. Stockdale.

MR. STOCKDALE said he had no favors to ask of any member, and resumed his seat.

MR. ALLISON pointed out the fact that the West had been given large donations of land for canals and other purposes.

MR. WAELDER explained that the West did not need canals, since she had no water with which to fill them.

MR. ROBERTSON, of Bell, opposed the substitute.[109]

He said: "Mr. President, I do not propose to occupy but a very short time in observations on this subject, as it has been very amply discussed, pro and con already, and at great length. I trust that in the remarks I make and the views I take of the question I will not be regarded as evincing a disposition to do any injustice to any part of the State, nor will I discuss it with the amount of feeling that has characterized the remarks of gentlemen on this floor. I do not regard it in the same light as many gentlemen who have preceded me. I do not regard it as a question pertaining to this Convention as to whether we should do justice to one section or the other, or injustice to one section or the other, but as it addresses itself to me it is a question of whether or not it is for the welfare of the entire State.

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[109] His speech was printed in full in the *State Gazette* (Austin), November 20, 1875.

### *The Policy of 1854*

"Has the policy inaugurated in 1854 given satisfaction? Has it been advantageous and conducive to the welfare and prosperity of the country? It occurs to me that this is the light in which we should view the issue which is now presented. If it has been a good policy in the past, and is a good policy now, and if its administration has benefited the country, it is for us to say as true men, that we will sustain it. But if it has not met the needs of the country as its friends hoped and claimed it would, if it is a measure calculated to retard the settlement of the country and to throw into the hands of a few individuals a large amount of the public domain of the State, to be held by them in perpetuity; if it shall appear that that line of policy has been detrimental to the best interests of the country, shall we as delegates representing the true interests of the country, sustain it? Let us see if the policy of 1854 has been of the incalculable advantage claimed for it by its friends. That policy, as is well known to every member on this floor, differed from the construction now put upon it by some honorable members. It required the running of railroads through your State on the thirty-second parallel, and communication with the seaboard. Have you carried out that policy by any means? No you have not, but you are running railroads in all directions—into the uninhabited lands of Texas—to obtain lands and draw capital and ostensibly to settle the country. Immense bodies of lands have been appropriated to to aid in building railroads, and still you have not secured the advance and the settlement of the country among the lands thus appropriated to railroad uses.

"You have not settled up the region in the parallel of 32 degrees. You have not settled the requisite number of families in that latitude, because that policy required that the lands should be disposed of in twelve years, the alternate sections being reserved for the State. These alternate sections have no more value now than they had when the road was first chartered, for its neglect to settle the country has rendered them valueless, or at least has failed to enhance their value by bringing these lands into settlement and rendering them susceptible to taxation. Had these roads been run to the seaboard they would have opened up each section alike. The policy was originally a wise one, as I have said before, was well worthy of the men who inaugurated it, and it would have been well for the country if this policy had been upheld. But the disposition to depart from this policy has been constant.

"Railroads have not been compelled to act in accordance with their contracts. Extensions have been granted from time to time up to the present hour. Instead of having a certain number of miles of railway, we have not even our lands, for their control goes with the extensions we have granted to the roads. Yes, Mr. President, if we had carried out that policy it would have redounded to the welfare of the country; but, instead of this, it has relieved this country not only of a large amount of its landed property, but also of large sums of money. The large sums of money expended in the defense of our borders, which would have been unnecessary had the railroad policy been carried out in good faith, is only a small part of the whole. Had this policy been properly carried out, we should have had a large population instead of a wilderness along the thirty-second parallel. Your railroads on paper have never settled Texas. Whence comes the population which settles your country? They come from counties provided with railroad and river transportation. Then why come to a country that is not provided with railroads?

### *The Value of Cheap Lands to Immigrants*

"It is your cheap lands and advantages given to men to acquire homes for themselves and their children. These are the inducements that settled your country. They did not come for railroad or school systems, for they came from those countries which have both in their highest perfection. Then there must be some other cause. It is your beautiful climate, your fertile lands, and your liberality to the immigrant. That is what is bringing the immigrant to your country, and it is building up Texas today. It is the inducements that have been offered since 1854 up to the present time that have brought a stout-hearted, manly population into this country, which was a wilderness, and had struck back the Mexican and the Indian. They have done good service in defending the soil of your frontier and have watered the soil with their blood, and today their sons stand there defending your frontier, and risking their lives for your welfare. It was for this that the men of 1836 struggled and fought, that those who succeeded them might secure for themselves and their posterity lands and homes in this bright State; not that it should be turned over to a grasping, rasping set of monopolies, inaugurated by those who promised us something and gave us nothing.

### *The Charges of Injustice*

"I call attention of the Convention to the charges of injustice that is said will be done if the Legislature refuses further grants to railroads. It seems to me that in complaining of injustice in this section, gentlemen have not properly estimated the advantages the West has derived from the land donation system. I have not heard any gentleman on this floor today allude to the amount of land received by the western country."

MR. STOCKDALE: "It has been alluded to by the gentleman from Nueces (Mr. Murphy), and by his colleague (Mr. Stayton). They said that the amount received was about 2,000 sections, against other portions of the country not half as large, which received about sixteen or eighteen thousand sections. The figures from the Commissioner of the General Land Office will bear out the statement."

MR. ROBERTSON: "But I wanted to say a word or two about these charges of injustice claimed to be done to the West, and to see what they contain. Take the International Railroad Company with its exemption from taxation for twenty-five years, an exemption that will more than double and treble the amount of money loaned to railroads in other sections of the country."

MR. MCCORMICK: "How about Red River?"

MR. ROBERTSON: "I do not estimate it in the same way, as that through which it is proposed the other road will have to build on its way to the Rio Grande; but the Texas & Pacific did get four sections to the mile more than other railroads ever got, to say nothing of the manner in which it was forced upon the people. The amendment, I say farther, cuts off other sections of the country who are entitled to its privileges. The country between the Colorado and the Brazos is not represented at all in the amendment. If injustice is to be spoken of here, I may as well mention the fact now, although I propose to close the door of legislation against subsidies to railroads, that the section of country I represent in part has no railroads and has very little prospect of getting any. Particular care has been taken in chartering railroads to leave out my part of the country—as well as a large portion of the country west of us—out in the cold. I inquire, ought this charge of injustice to be made so frequently to people who are not sensible of the advantages that are claimed for the policy, but which they believe are injurious to the best interests of the country?

"Railroads do not bring our broad acres into cultivation, and will not do so. It takes something more than railroads to till the soil and fight the Mexicans and Indians. If we continue the policy let us see that it gives us those benefits we expected to receive when we first donated lands to railroads. We granted them on contracts that were to be carried out in good faith, and not one of them since 1854 has been carried out in toto, or even in part, in good faith. If they have I would like some gentleman to rise in his place and say when and where. They come up continually asking more time and and favors at the hands of the government. They have not helped those who own the soil. The question is whether we shall stop this policy or not. As to the matter of injustice to the people of the

West, I say that none has been done them. It is simply their misfortune, as it is ours, that they have no railroads.

"Railroads will not populate a country. You must give advantages to the tillers of the soil to do that. Increase your commerce and railroads will come. If they do not come, you will make capital in your own midst and be able to build railroads for yourselves, and in God's name leave us free to do it. Don't tie the hands of our people in the interest of foreign corporations. It is injurious to the railroads themselves. Let us nourish them through our immigration to the borders. Grant to the settlers headrights, guarantee to them the soil and they will defend the soil. This is the way to encourage railroads and to lessen the burdens of taxation—which become heavier year after year—and at the same time to defend your northern and western borders.

"I would not cut off any privileges that railroads are entitled to, and I say to the gentleman from Calhoun, that the people want a government they can live under. They say to this Convention, 'Give us equal chance with the lands and equal protection, and don't rob us of our birthright; but if you do rob us, do it in the interest of our own people, and don't open the door to foreign corporations to rob us.' "

MR. WAELDER: "I would like to ask the gentleman why the people of Texas do not build their own railroads."

MR. ROBERTSON: "I will answer the gentleman. They do not have it in their power to build railroads, and if they did, they would not do it. Public sentiment is adverse to internal improvements of this character being constructed at the expense of the government, and the people are not able to do it themselves, and that is the reason why we do not build them. It has come to be regarded as a matter of course that we have got to give our lands away, and that we have got to hunt up somebody to take them. Such a policy did not obtain among the early settlers. They won it and gave it to those who would defend it for their toil and their labor; and if we are wise we will do the same thing today and not throw all the lands of the State into the hands of chartered corporations, come from where they may. I do not understand this substitute as being in its purpose equitable and right. If it is to benefit that section of the country, and is to be of benefit to the railroad that is to go through there, it must exclude every other railroad company and every headright and bounty warrant now in the hands of individuals to be of service to them. If not, I can see no reason why they should wish to incorporate such a provision; for if all the railroad companies that have been chartered carried out their contracts in good faith, there would remain only a very small amount on which to locate lands in the future.

"I apprehend that a very large part of our public domain has been appropriated, and I think there is no better time than today to wind up our estate and to begin anew. We cannot tell what there is left us. The Commissioner of the General Land Office does not know and is ignorant of the facts, so how can we expect to know? We cannot set aside and appropriate property we do not own, and there may exist encumbrances on it that may bring out litigation on lands that are now liable to location. I believe the time has now come to make a finality of it, at least as far as the section of the country I represent is concerned, and I know I do but utter their sentiments in saying that it is time to close this system of landed donations to railroads altogether.

MR. ROBERTSON offered the following amendment: "Provided that the Legislature shall have no power to extend the time or grant relief to any company obtaining a grant or a certificate after the adoption of this Constitution." He continued speaking as follows:[110]

"In support to the amendment I now offer to the substitute as now pending before the House, by the gentleman from Marion (Colonel Crawford) I propose to say that I have no intention to oppose the efforts of those who are advocating the policy of giving land to railways to carry out their contracts to the State in good faith. To such, the amendment I propose is absolutely necessary, and also necessary as a means of security to the country. But if, on the other hand, it is intended that those who contract with the government shall have a long lever, and shall have the right from year to year and from century to century to hold these roads in reserve for that purpose, and that lands shall be given for the purpose of building railroads—for that is the policy—let us come out like men and declare that all lands shall be devoted to railroad purposes at once. Let us not dodge the issue. Let us not fasten any scheme of education on the railroad system which we know will be inefficient. Let us assume no such excuse in going before the people of Texas with a new Constitution.

"If we want a system of education, let us come out like true men and adopt one for the country that will be efficient, but let us not dodge the question. Let us meet that question fairly today, and if we decide to continue a policy which so long has been detrimental to the interests of the country, let us do it openly and honestly. If it is intended to settle the lands of the country, to induce the coming of actual tillers of the soil—and to accomplish that object the proposition to extend the time of aid to railroads has been proposed—

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[110] The remaining part of Mr. Robertson's speech was delivered the next day, after the amendment offered by Colonel Crawford, but it was all published together and was considered as one speech by the newspapers.

let us give these railroads an opportunity of carrying out their contracts in good faith and in proper time, and not leave the question open and prepare for failure in advance, not only prepare for it by law but by organic law under our own Constitution. It is a duty we owe to the country and to ourselves in preparing such contracts, to look to it that they be fair to one party as well as to another. The proposition of the gentleman from Marion I do not regard as fair even to the railroad system.

### *Not Opposed to Railroads*

"I do not oppose railroads when built with their own means. I shall forever be willing to give them the right of way and to protect them in what they earn; but I do not propose to crush out the interests and welfare of the country fifty years in advance of a necessity for this increase. This proposition—unless it is intended to give the railroad system the advantage of the people of this country—is unjust to the railway system itself, hence, why comes it you give them the land that you force them to sell at a price fixed by others. If this contract is intended in good faith, in God's name let them have the land, and let them settle it on the conditions indicated by the Committee on Public Lands and Land Office; but, Mr. President, without the amendment I propose, the whole public lands of the country may be appropriated, and for an indefinite time held up from actual settlement. This, I believe, will be very injurious to the best interests of Texas, and will not advance the railroad policy one iota. The original article provides that no appropriations of public lands shall be made in advance of construction. It provides further that all lands granted to railroad companies, which have not been alienated in conformity with the terms of their charters and the laws of the State under which the grants were made, are forfeited to the State, and subject to location as other vacant lands. It provides further that railroads shall not have their time extended.

"Mr. President, if we were to pass the original bill, we should have some protection, some guarantee as a people that the system would terminate in twelve years. It gives sixteen sections to the mile on the completion of twenty-five miles of road, and provides for the alienation of their lands in twelve years. This gives us a guarantee that if these railroads are not built it will end the system in twelve years, and parties are open to contract on these terms if they like, and on no other. I say as a friend to railroads that we have incorporated already more railroads than is good for the railroad interest. Then if we incorporate more roads we depreciate the capital already invested in Texas. We know that in this as well as in all other matters of a similar character, that it will not benefit them by throwing upon the market additional lands and additional land certificates. Thus it is easy to be seen that the railroad system is crippled by this policy. Stop it, and then the certificates already in the hands of the present railroads or other parties may become valuable. Let us perfect some of the measures already on foot. But, if the substitute of the gentleman from Marion is to pass in lieu of the original proposition, I trust that this amendment which I offer and which I regard as essential to the protection of the interests of the country, will be coupled with it."

Mr. Stayton's substitute was lost by a vote of 23 to 39.

Mr. Nugent's amendment was lost by a vote of 24 to 40.

Colonel Crawford's substitute was lost by a vote of 23 to 38.

## FIFTY-SIXTH DAY

### TUESDAY, NOVEMBER 9, 1875[111]

### *Public Lands and the Land Office*

JUDGE REAGAN moved to strike out the proviso in Section 3, which read as follows: "evidence of the appropriation of which is on the county records or in the General Land Office."

MR. STEWART offered to amend by inserting before the word "record," "or on the county map."

MR. FLOURNOY offered a substitute for both amendments, as follows: "Constructive notice of title of real estate shall be held good as against *bona fide* purchasers for valuable consideration, or a *bona fide* location thereon, unless the evidence of the cause shall have therefore been of record in the county or on file in the county treasurer's office."

JUDGE REAGAN withdrew his amendment and supported the substitute.

After some debate Mr. Flournoy withdrew the substitute.

Mr. Stewart's amendment was lost.

JUDGE REAGAN moved to strike out Section 8.

COLONEL FORD said that he would state for the information of the gentleman from Anderson, that the country between the Nueces and the Rio Grande had formerly belonged to the State of Tamaulipas; that the people thereof could not have been called in question for want of loyalty to the Republic of Texas; that instructions had been issued to the Texas Minister to the United States to abandon the claim of Texas to the country beyond the Nueces should it be necessary to do so.

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[111] The proceedings for this day were taken from the *State Gazette* (Austin), November 10, 1875.

President Santa Anna, when a prisoner of war after the battle of San Jacinto, had entered into a treaty with the Government of Texas, by which the Rio Grande was made the boundary between the two republics. Under the provisions of that treaty, the Mexican troops were permitted to withdraw without molestation from the territory of Texas. After having received the benefit of the treaty, Mexico had endeavored to repudiate, but such a thing was not permissible under the law of nations.

General Canalizo had issued an order commanding the residents between the Nueces and the Rio Grande to abandon the country, and denouncing those failing to do so as spies, had provided to have them punished as such. At that time there had been a large and prosperous population in that section. They had erected buildings, established ranches, and had become the owners of thousands of horses, cattle, and sheep. They had left many horses and cattle behind them. The Texans had made inroads into that section—they drove horses and cattle into Texas—hence the term "cow-boys." These were acts of war. The Mexicans also went into the country and had driven animals into Mexico. The inhabitants could not occupy their lands under such conditions.

After the conclusion of the war between Mexico and the United States, about the year 1849, the people began to return to their lands.

Those people occupied a different position towards the State of Texas from that occupied by others. They required the benefits of legislative relief, and various acts of the Legislature had been passed to enable them to complete their titles. These acts extended from 1850 to 1870.

Section 8 did not provide for the validating of any title to land not previously validated and recognized by the State Legislature. It simply allowed them five years more to return their field notes to the General Land Office, and to furnish plots of their surveys. It did not propose to change the status of the claim. This relief had been asked for by men who had paid taxes on their lands, who were acting in good faith, and who were obeying the laws of the State.

The unsettled condition of the country—the incursions of Indians and marauding Mexicans—had prevented them from complying with the law and returning their field notes prior to January 1, 1875. He believed that there were no adverse claims to any of the lands. The terms of the section showed its meaning. He had written the greater portion of it himself, and had procured its adoption by the Committee on Lands and Land Office. He was not of that class of men who favored the revival of old land claims, and only asked for that relief which he considered the claimants justly entitled to receive at the hands of the Convention.

MR. MURPHY said he thought Judge Reagan imagined from his official and distinguished position, that he could rush through any motion he desired. The section he had proposed to strike out he did not even understand; he had said so himself. Neither he nor the Convention had the right to deprive the people between the Nueces and the Rio Grande of their rights, for they were vested rights, secured by the United States treaty of Guadalupe Hidalgo, and could not be divested by any act of that body. Judge Reagan's previous amendment that morning, as well as his present action, seemed to evince a desire to strike out those rights, and to allow the lands between the two rivers to be subjected to be floated by outside parties. These titles had long existed, but, as Colonel Ford had shown, it had been impossible to comply with the terms of previous acts because of the unsettled condition of the country, which even then they were defending day and night. If Judge Reagan had inquired of the members from the Rio Grande it would have saved all this valuable time spent in debate. He regretted that he had apparently been actuated by unfriendly feelings toward the section which he partly represented.

JUDGE REAGAN denied any unfriendly feeling for the West. He said he was not to be smothered, however, and had a perfect right to ask for information, not only for himself but for other delegates as well.

MR. WEST explained that this section did not propose to validate any invalid titles. It had been put in out of deference to western members, though he felt with Mr. Stayton that the section was not necessary.

**Judge Reagan** said he did not think the section was in the interest of actual settlers, but that it would react in favor of speculators.

Judge Reagan's amendment was lost by a vote of 18 to 43.

**Mr. German** moved to strike out Section 3.

**Colonel Crawford** offered an amendment for the section. It provided that no lands should ever be granted except in a manner prescribed by general laws, and that no law should be passed granting to any citizen or class of citizens any of the public lands or privileges not equally belonging to other citizens. It gave entry to genuine land certificates, to actual settlers, for educational purposes, sixteen sections to first-class railways, and twelve sections to second-class railways.

**Mr. Flanagan** made the point of order that the same subject matter had been decided the day before.

**Colonel Crawford** said that the language and a great part of the subject matter were different.

**President Pickett** ruled that the amendment was in order.

**Colonel Crawford** claimed that the section as it stood was imperfect, and that the construction of railroads should be made subsidiary to the benefit of the education of the youth of the State.

**Mr. McCormick** moved the previous question on the engrossment of the article, and was sustained.

Colonel Crawford's substitute was adopted by a vote of 33 to 32.

Mr. German's amendment to strike out was lost by a vote of 33 to 35, a number of members, including Mr. German himself, changing their votes to "no" after a closer perusal of the section.

The article was then engrossed by a vote of 40 to 20.

### *Judicial Department*

The question pending was the substitute of Mr. Flournoy for that of Judge Reagan, which had been adopted as a basis for action. It increased the jurisdiction of justices of the peace to $200, did away with Judge Reagan's county court provision, with civil and criminal jurisdiction, and with its appellate jurisdiction from the justice court; it proposed to relieve the district courts by limiting appeal to the Supreme Court to cases originating in the district courts, and permitting no appeal from the justice courts to go beyond the district courts.

MR. MCCORMICK spoke for the majority report, which had been substituted, he said, by a very small majority. He said he was entirely opposed to the Flournoy substitute, as it would not give the relief of the courts asked for.

## FIFTY-SEVENTH DAY

### WEDNESDAY, NOVEMBER 10, 1875[112]

The vote engrossing the article on public lands and Land Office was reconsidered by a vote of 44 to 16.

The pending question was then the motion of Mr. McLean to table Mr. German's motion to reconsider the vote adopting the substitute of Colonel Crawford. The Convention, by a vote of 22 to 49, refused to table, and reconsidered the substitute by a vote of 50 to 21.

JUDGE REAGAN gave his reasons for voting for the substitute, the principal one of which was that it allowed actual settlers on the lands to be hereafter granted to railroads, and settle thereon on payment of the actual value of the land, the price of which was to be regulated by law.

MR. FERRIS contended that the substitute allowed the Legislature to set apart a reservation of lands to railroads. This was denied by its friends, but there was nothing in it prohibitory that he could see. The section providing for broad and narrow guage roads, he thought was out of place in a Constitution. He objected to the language in the last clause, which might furnish means for litigation, as it opened all lands granted to railroads to actual settlers, on the payment of the maximum value, $2.50 an acre, while railroad lands in his own county were worth $5 an acre. He favored the bill as reported by the committee.

MR. ROBERTSON, of Bell, moved to amend the substitute by adding: "Provided that the Legislature shall have no power to extend the time or grant relief to any company obtaining a grant or a certificate after the adoption of this Constitution."[113]

COLONEL CRAWFORD defended his substitute. He claimed it was just to the railroads, just to the citizen, just to the high interests of the State, just to her duty to educate the youth, and just to the taxpayer. If there was anything in the substitute capable of misconstruction he was willing to have it amended, and would aid in doing it; for he had no pride in it otherwise than for the benefit of the whole people of Texas.

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[112] The proceedings for this day were taken from the *State Gazette* (Austin), November 11, 1875.

[113] Mr. Robertson's defense of this amendment has been given heretofore. See page 269 above.

(Mr. Stockdale in the Chair.)

PRESIDENT PICKETT contrasted the original section with Colonel Crawford's substitute, and claimed that it was much more liberal, except in the single provision of allowing the settler to settle on the railroad lands at a fixed valuation, than the substitute. If the exception referred to was thought a good one, it might be engrafted in the original section.

MR. WAELDER moved to strike out the proviso in Section 3, as follows: "The Legislature shall no power to extend the time of or grant leave to any company obtaining a grant or certificate after the adoption of this Constitution."

MR. WAELDER pointed out the fact that the Galveston, Harrisburg & San Antonio Railroad was then within forty-five miles of San Antonio. It would be finished probably to the Guadalupe River crossing by the first of January, which would bring it to within twenty-eight miles of San Antonio. That company had built more road than any main line in the United States, since Jay Cook's failure. It was physically impossible to complete the road before the first of January. If prevented by the Convention, it would be impossible for them to complete the road at all, unless they had previously secured the right of way and would complete it at their own expense. There was not a railway in the State that would not probably require an extension of time. Surely, if railroads were necessary to the welfare and prosperity of the State, it was necessary to give them time to complete them.

JUDGE BALLINGER spoke of the Galveston, Colorado & Santa Fe Railroad as another case of the same kind.

MR. MOORE referred to the Houston Narrow Guage Railroad.

MR. STOCKDALE spoke of the Texas & Pacific Railroad as a case in point.

MR. ROBERTSON said his amendment referred to railroads to be hereafter built.

MR. STOCKDALE said that the road in course of construction to San Antonio was more likely to be completed that one by a new company chartered to run from San Antonio and connect with it.

Mr. Robertson's amendment was lost by a vote of 14 to 52.

Colonel Crawford's substitute was lost by a vote of 17 to 48.

MR. MCCORMICK said he hoped the Waelder amendment would be adopted, for he was convinced that if San Antonio once got its road they should hear no more talk of State division.

Mr. Waelder's amendment was adopted by a vote of 53 to 12.

The article was then engrossed by a vote of 42 to 20.

### *The Judiciary Article*

MR. DOHONEY argued at length against the Flournoy substitute. He said he favored the majority report, and next to that the minority report of Mr. Norvell.

JUDGE BALLINGER opposed the substitute of Mr. Flournoy, and spoke for the majority report.

MR. FLOURNOY replied to both speakers, condemning the county court system, which he said was really nothing but additional district courts. He held that they would not reduce the expense of the judiciary in the least, but on the contrary would increase it.

## FIFTY-EIGHTH DAY

### THURSDAY, NOVEMBER 11, 1875[114]

### *The Judiciary Article*

The article on judiciary came up as unfinished business.

GENERAL WHITFIELD moved to lay the Flournoy substitute on the table.

The convention refused by a vote of 32 to 33.

MR. HENRY, of Smith, said he supported the majority report. He spoke, not as a lawyer, but as a citizen. He thought efficiency should be consulted before cheapness. A cheap but inefficient judiciary would be blighting to the public interests. He claimed that the system of the majority report was the best adapted to the wants of the time. The system advocated by the substitute would fill the county jails with prisoners to be kept at an enormous expense. This was the crying evil of the day, the counties being burdened by taxation to keep prisoners. The proposition to make their labor available was all very well if it could be done, but even that would involve heavy expenditures in the employment of guards and the ramification system in all the counties. His conviction was that prisoners should be kept under lock and key in the jails; and yet to incarcerate them in the county jails for minor offenses and misdemeanors would entail such vast expense that the jails would have to be opened in time and the prisoners released to save the counties from pecuniary ruin. He believed that the county court system, advocated by both the majority report and the Reagan substitute, was the only mode of relieving the district courts. It would cost something, but, as he had said before, a cheap judiciary must in his opinion be inefficient. He pointed out the advantages of the county court system, and was of the opinion that the majority report furnished the only solution of the difficulty.

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[114] The proceedings for this day were taken from the *State Gazette* (Austin), November 12, 1875.

Mr. Flournoy's substitute was lost by a vote of 11 to 52.

MR. WAELDER moved to insert in Section 1, "in a court of appeal," adding another court to those already suggested. He said he considered this essential if the Supreme Court was to be at all relieved. Without this relief, any judicial system they should adopt would be a failure, and the Convention itself would be a failure. There were at that time 1,600 undecided cases before the Supreme Court. If they disposed of those cases by the appointment of commissioners they would have to do the same thing two years later. What was wanted was permanent relief, and the only way it could be obtained was by means of a court of appeals.

Mr. Waelder's amendment was adopted by a vote of 37 to 23.

MR. RUSSELL, of Wood, offered to amend by striking out all after "law" in the fourth line of Section 4. It struck out the power of the Legislature to establish district criminal courts in cities of 15,000 population and upwards. He said he protested against the establishment of the new court authorized by the last amendment.

MR. STEWART defended the clause as it stood.

MR. NUGENT moved to table the Russell amendment, but the House refused to table by a vote of 18 to 41.

JUDGE BALLINGER said there were probably thirty new ships daily coming into the Galveston harbor, whose crews were coming ashore daily. Many crimes were committed by this class of men. The criminal court, before which such cases came, sat for only five months in each year. It was necessary to free the jails and to make justice prompt. If the amendment passed it would strike a serious blow at Galveston, as those cases, now promptly disposed of, would have to be held six months for trial.

MR. RUSSELL, of Wood, withdrew his amendment.

MR. DOHONEY offered an amendment that allowed the Legislature to provide criminal district courts for cities of 35,000 population and upwards.

MR. WAELDER opposed the amendment. He said that if his county were left a district in itself they would require no criminal court, but if incorporated with another district they would, and this was equally true of Austin and Dallas. The number of inhabitants was no criterion as to the necessity for a criminal court.

MR. FERRIS opposed the amendment, taking the same view of the case as Mr. Waelder. He said Dallas had petitioned for a criminal court. A floating population required such courts. There was a large class of that kind of people in Dallas, and though she had only 15,000 inhabitants, such a court was as necessary to her as to the larger cities. He thought the clause was sufficiently restricted as it stood.

Mr. Dohoney's amendment was adopted by a vote of 41 to 22.

MR. RUSSELL, of Wood, moved to amend Section 1 by adding, "provided such town or city shall support such district court when established."

MR. STEWART said the city of Galveston was willing to pay for her civil court, but thought the State ought to pay for the criminal court.

MR. RUSSELL, of Wood, said he was opposed to such a plan. If Galveston did pay a larger proportion of the taxes than other cities, she ought to be satisfied with the same protection given to other sections.

Mr. Russell's amendment was lost.

MR. BRUCE moved to amend Section 2 by reducing the term of the Supreme Court judges from eight to six years, and to reduce their salaries from $4,000 to $3,000 a year.

MR. GERMAN moved to amend by reducing the term to four years.

GENERAL WHITEFIELD moved a substitute for the section, which reduced the number of judicial districts to three, each district to elect one Supreme Court judge and—district judges. He said his substitute was a plea for the black belt, in which he lived. If they voted that amendment down they would destroy the hope of fifteen counties, and put them under negro rule. Not that he had the least prejudice against the negro, but it would force upon them a set of district judges elected by the negroes of those districts. He said he had no feeling in the matter, not in the least. His heartfelt sympathy was with the freedmen of the State, but they all knew that they were not competent to elect a judiciary for the country. The hope of fifteen counties was hanging in the balance on the amendment. If they voted it down they forced on those counties a negro elected judiciary, and forced every Democrat to vote against the Constitution.

The substitute was defeated by a vote of 29 to 38.

MR. KING opposed the German amendment. He said there was no state in Union where the term was as short as four years. The term of Supreme Court judges was usually double that of other state officers. Long terms in other states were the result of long experience. With short terms the ablest lawyers and jurists in the state would be unable to give up their practice and risk the results of an election. He urged other objections against the change.

JUDGE BALLINGER said the new Constitution of Missouri made the term of their judges ten years. The Constitution of Illinois, adopted in 1870, fixed the term at nine years. The new state Constitution of Pennsylvania, a Constitution highly commended on the floor of the convention, had fixed the term at twenty-one years, while New York, by recent amendments, had made the term in that state fourteen years.

Mr. German's amendment was tabled by a vote of 54 to 15.

MR. SANSOM offered a substitute for the Bruce amendment, reducing the salaries of Supreme Court judges from $4,000 to $3,500.

General Ross spoke against a cheap judiciary.[115]

He said: "Mr. President, I have been content hitherto to sit silent, but I regard this question as of too much importance not to give the reasons that will control me in casting my vote. In listening to the debates, I have felt something like the old donkey who was carried to hear his master speak. When asked how he liked the speech, he said: 'When he first commenced I liked it so much that I prayed he might never quit, and before he got through, I thought the Lord had answered my prayer.' (Laughter.)

"I have demonstrated by my votes as great a desire for retrenchment and reform in governmental expenses as any delegate present, and while I have not gone as far as some, yet I have been willing to see the salaries of officers graduated in a just proportion to the revenues derived from the various industries of the country. In fixing the compensation of the judges of our courts I am unwilling to overstep the boundary lines which I think separate a wise and commendable economy from a niggardly parsimony.

"In looking to retrenchment, we should bear in mind that it is not the rock that stands out boldly, giving warning to the mariner of danger, against which the ship is wrecked, but the sunken reef over which the flowing waters tempt the bounding keel to swift destruction. So in government; it is not that which the people see and understand which undermines the prosperity of the State and depletes the treasury, but the secret leak, the insidious and unseen advance of corruption and extravagance hidden away in the complications of the machinery of government, so as not to be visible to the public eye.

"Upon investigation we find that the salaries of all the officers paid by the State amounts to $247,000, and when the number is reduced as is contemplated by this Constitution, if the salaries remain as now fixed by existing laws, the sum total will be about $200,000. But when these salaries have been reduced about one-fourth, as recommended by the extremest advocates of retrenchment, there will be saved to the State about $50,000. Then, if we reduce the salaries of the supreme judges each $500, as is proposed in the report of the committee, we have $3,500; and when you reduce the number of district judges to twenty-five, you will have added $52,500; and if we then abide by the report of the committee and reduce their salaries $500 each, there is $12,500 more, making the aggregate amount saved the State by reductions in the judicial department, $57,500, which is quite as much as the people demand at your hands from this source.

"The present State tax of one-half of 1 per cent is not the tax that is proving so onerous to the people of our State, and this will be reduced by the action of this Convention one-fifth without reference to salaries.

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[115] His speech was printed in the *State Gazette* (Austin), November 13, 1875.

"It is the vicious criminal system of Texas that is burdening the State and bankrupting the counties, and of which the people so justly complain, and it is here that the pruning knife should be vigorously applied.

"The cost for executing the criminal laws for the year ending August 31, 1875, to the State amounted to $373,120.

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|---|---|---|
| The cost to the counties for keeping prisoners | $216,667.60 | |
| Jail guards | 58,063.21 | |
| Juries in criminal cases | 235,216.67 | $519,807.48 |
| Total | | $893,017.48 |

"Besides this, there was the further cost of $132,748.18 for grand juries and juries in civil cases, and we find that with all this expenditure there were 972 men sent to the State penitentiary at an average cost of *one thousand dollars* for each convict. It required $100,000 to pay the mileage of these prisoners to Huntsville, and the fees of district attorneys and other officers concerned in securing convictions amounted to about $200,000 more. It is safe to say that this expense might have been reduced to one-third that amount, and the officers very justly compensated. The jail fees in many counties of the State are double what they should be, and that, with the ruinous cost of jury service, exceeds the whole ad valorem tax levied and collected in the counties.

"In McLennan County these two items of expenditure bring the county upon the wrong side of the balance sheet about five thousand dollars annually.

"The people desire retrenchment certainly, but they want intelligent, reasonable action on that subject, looking to consequences, and estimating and weighing results.

"They want a government as economical as an efficient good government can be made, but they do not desire that efficiency in any sense shall be sacrificed to a mistaken idea of economy, which saves a dime on one hand and squanders thousands of dollars on the other.

"You may construct the best Constitution ever devised by the wisdom of men, and unless you have men of brain, integrity, and patriotism to execute and enforce its provisions, it will be as a dead letter on the statute books.

"Since the time of the great Burke it has been a recognized axiom in political economy that that government is the best which is best administered, and no better illustration of this truth can be adduced than by inviting your attention to the difference between the present

Democratic administration and the administration which preceded it, under the existing Constitution. The Constitution under which they both administered the government was the same, and yet we know that the results have been widely different. The present administration, by a judicious system of retrenchment, inaugurated in the several departments in one year, saved to the Treasury of the State an amount nearly equal to the salaries paid to all the officers of the State Government.

"Men, not territory, constitute the State, and in a large measure the men to whom the government is confided give tone, character, prestige, and strength to the departments. Good men will give you a good government under a bad Constitution, while incompetent though well meaning men will often, under a wise Constitution, give you a weak and unwise government.

"In view of this fact, it is the duty of the State to attract to its councils and elevate to its judicial honors its most eminent men. Those who will give it character and prestige at home will build up its greatness and power. The people of every country are judged by their government, and those who compose its officials being deemed representative men, they give their government character for excellence and wisdom, or for weakness and imbecility.

"Then instead of economy, it is the most profuse extravagance and the most puerile statesmanship for any people to lower the standard of their government. High character, ability, learning, and statesmanship in the personnel of the government has a material money value to the State.

"All history proves that the most powerful conservator of free government is an able, honest, and fearless judiciary, chaining down by judicial construction the other departments where there is a tendency to become restive under the restraints of the law, or a desire to invest might with any of the prerogatives of right.

"When the Legislature or the Governor transgresses the Constitution and the citizen appeals to the courts for protection against the usurpation, we want a judge with the brain to perceive the right and the nerve to pursue it.

"There is not a page of British history, full as it is of deeds of renown both civil and military, that gives character and dignity to the race from which we spring, brighter than that which records the struggles of the English judiciary in behalf of English liberty.

"This judiciary is the political ark of the poor man, to which he must flee in time of danger, and the only shield by which he can protect himself from the attempts of power to deprive him of his rights.

"No man can tell when through the frailities and temptations of his life, misfortune may be brought to his own door. And it is under such circumstances that he can best appreciate the value of a tribunal, fair, honorable, and worthy of a free people, which is to try him.

"The judiciary deals with the person and property of the individual members of society, while the other departments deal only with the general body politic. Wrongs done by the latter attract universal public attention, demand and receive speedy redress, while those done by the former fall upon the individual citizen, impose upon or crush him and he is without remedy, because the unjust judgment is law to him and his case. So that, in the ability, integrity, and learning of the judge, each individual citizen finds his most powerful, and frequently his only, assurance of protection for his person and property.

"Unjust and oppressive laws may be repealed, but unjust and oppressive judgments, rendered in the lower, and affirmed in the higher, courts are irrepealable and fixed, and the luckless citizen is wronged without remedy and his wrongs do not even attract attention beyond his immediate neighborhood.

"What is the boasted writ of habeas corpus, the very mention of which carries the mind of every freeman in our broad land back to that glorious struggle at Runnymede, which commemorates the grandest exploits of the heroes of the middle ages, without an honest, fearless judge to give it efficiency. That great writ and an independent judiciary go hand in hand, and either is powerless without the other, but combined they form the cornerstone of the citizen's liberty.

"Such being the importance of this department of our government and the character of the men required to fill with dignity and honor this branch of the public service, can we hope to secure them by the illiberal salary proposed in the substitute?

"I hold it to be an honest rule to estimate a man's ability by his achievements, taking into consideration, of course, the difficulties surmounted. Then, is it true that any lawyer possessing the requisite ability for a judge, cannot make more than $2,000 or $2,500 per annum? Half of that is made by hundreds of commercial travelers and clerks in the State. And we should bear in mind that the judge, when he takes his seat upon the bench, is excluded from money making, that the salary is to be his whole dependence, and he must expect to lose his practice, for others will fill his place in the community. When his term expires his former clients and supporters will have formed new ties and business connections, from which he may not hope to wean them.

"Uniformity in the decisions of the courts, so essential to the well being of the people, can be secured only by obtaining and by keeping in office good judges. Rotation in political office is a wise rule, but when we get a good judge in judicial office, we should desire to keep him as long as he is able to do efficient work. If his salary is so meagre that he can lay aside nothing for his comfort in old age —if he serves the public while he is able to work—he is subject to charity when no longer able to earn the salary and goes off the bench.

"In the judicial districts comprising the cities of Galveston, Houston, Dallas, San Antonio, Jefferson, Austin, and Waco—being one-fourth of the entire number—I think it will be admitted that no man with a family can live decently upon the salary here proposed. Will you ostracise the talent of these cities or compel judges who live there to labor for the public good for about half what it costs them to live?

"When we come to compute the amount saved the State, we find it much too small to justify the risk of the occupation of the bench by incompetent men. The destruction of the public confidence in the judicial tribunals—the greatest curse that can befall a country—and the demoralization consequent upon it, besides hundreds of thousands of dollars in costs and damages to the people, would result from cheap judges. For when they have no confidence in the court that adjudicates their rights, they will always appeal in search of justice to their great damage and the consequent detriment of the state by multiplying the cases on the docket, and delay the legitimate purpose designed to be attained through the courts.

"Then, it seems to me that when we realize the importance of this branch of the public service, as a matter of economy we should provide such salaries as to justify the most intelligent men to seek the positions."

JUDGE REAGAN opposed the amendment. He thought, like the last speaker, that the State would suffer if the salaries were reduced.

MR. JOHNSON, of Collin, said that as a "rutabaga" he would protest against high salaries for the judiciary. He thought that $2,500 was sufficient for any judge.

Upon motion of Mr. Gaither all the amendments were tabled.

## FIFTY-NINTH DAY

### SATURDAY, NOVEMBER 13, 1875[116]

### *Article on Judiciary*

A motion was made to reconsider the vote on Mr. German's amendment, refusing to reduce the salaries of Supreme Court judges from $4,000 to $3,550.

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[116] The proceedings for this day were taken from the *State Gazette* (Austin), November 14, 1875.

GENERAL WHITFIELD moved to amend Section 6 by adding, "that the district judges, for the first term under this Constitution, shall be appointed by the Governor, by and with the consent of the Senate, after which they shall be elected as in this section provided." He said he offered the amendment as a last lingering hope for his district.

MR. MILLS spoke against the amendment.

General Whitfield's amendment was defeated by a vote of 17 to 51.

The Convention voted to reconsider Mr. German's amendment by a total of 40 to 27.

JUDGE BALLINGER protested against the adoption of such an amendment, saying it would induce the bar of the State to vote against the new Constitution. He urged that it would be lowering the dignity of the Supreme Court. No Constitution that would pull down the judiciary would receive the support of any member of the bar.

MR. STAYTON endorsed the remarks of Judge Ballinger.

MR. DEMORSE said he had struggled for several weeks to obtain a decent compensation for the officers of the State, but the Convention had refused to give them anything less than what was absolutely necessary for their support. Now the House had gone to the other extreme and proposed to give large salaries to the Supreme Court judges. He believed that seven-eighths of the people would approve their action, if they adopted Mr. German's amendment. So far as North Texas was concerned, he was convinced that it would meet their approval.

MR. MURPHY said he would oppose the amendment. He was not in favor of putting up the Supreme Court at auction.

MR. WAELDER opposed the reduction in an earnest appeal.

MR. STOCKDALE said he regarded it as a practical question. Supreme Court judges required all the virtues and characteristics of the noblest of God's creatures. No lawyer in his district of the requisite attainments could take such a position at the salary offered.

MR. SANSOM said he did not want the salaries of the officers reduced to such an extent as to have the offices filled with inefficient men. He thought $3,550 was a sufficient salary for Supreme Court judges. They were gentlemen who had acquired competency, and would not expect to save anything. It was a high honor. If they had not acquired a competency at the age at which they usually reached the Supreme bench, they could not have earned any higher salary than it was proposed to give them.

MR. JOHNSON, of Franklin, favored the amendment.

The amendment was adopted by a vote of 36 to 27.

## SIXTIETH DAY

### MONDAY, NOVEMBER 15, 1875[117]

### *The Judiciary*

On motion of Mr. Blassingame, Mr. King's amendment to Section 13, inserting "such compensation for his services" in the place of "he shall receive as a compensation for his services, such fees and perquisites as may be prescribed by law," referring to the payment of county judges, was reconsidered.

MR. DARNELL said he thought it ought to be left to the Legislature, for though some counties might require county courts, there were many others which would not require them. He wanted the word "may" and not "shall" inserted.

MR. NUNN said the people expected a judiciary that would be adequate to the wants of each community. He thought the county court system was efficient and economical. Without it, he did not see how they could get along with less than fifty or sixty judicial districts. The provision sought to be incorporated was the same as that of the Constitution of 1866.

MR. GAITHER proposed the following substitute for the amendment: "He shall receive such fees and perquisites of office as may be prescribed by law, including a docket fee for each civil case tried in the court; and the commissioners' court of such county may allow him such compensation as in their discretion they may think proper."

MR. KING said he took it for granted that members were opposed to the amendment, judging by the last vote taken, and he rose merely to explain his reasons for offering it. These reasons had been so well stated by Mr. Darnell and Mr. Nunn that he need scarcely to say more to explain his position than to adopt the reasons expressed by them. Briefly, in his judgment, all the details pertaining to the duties and compensation of the officers of the county courts when not fixed in the Constitution by salary should be left to the Legislature. He thought it one of those cases where the Legislature alone was able to decide in what manner the county judge should be compensated, for the reason that there were scarcely two counties in the State similarly situated. In many of the counties the fees and perquisites would not amount to a sum sufficient to secure the services of a competent judge, but the Legislature could determine where this would be so, and where they would be sufficient for the purposes of salary. He saw no way of relieving the district courts except in the manner proposed, and which was adapted to every section of the State. For these reasons he was in favor of the Legislature fixing the compensation of those officers. As the matter was left in the bill without his amendment the compensation was confined to fees and perquisites, which would greatly impair the county court system, if it did not destroy it altogether.

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[117] The proceedings for this day were taken from the *State Gazette* (Austin), November 16, 1875.

MR. DEMORSE said that he had voted for reconsideration of the amendment of the gentleman from Kendall, not because he was dissatisfied with the amendment as it stood, for on the contrary he was fully satisfied, but a large number of the members were not, and as he conceived that the proposition of the gentleman from Falls, including a docket fee on every civil case tried, would provide in most counties ample compensation. He was willing that that amendment should be substituted. Besides, as it had been said by the member from Tarrant, that there were counties whose necessities did not demand a county court, this amendment under the power conceded the county commissioners provided the flexibility to allow such county to dispense with a county court by failing to provide any compensation beyond the incidental fees. So the natural business of a county not providing adequate compensation to the officers, no court would be organized. If the business would provide adequate compensation, or nearly so, this would indicate the necessity and provide maintenance for the court, to which a small additional compensation might be added if the county commissioners deemed that the public interest demanded it.

Mr. Gaither's amendment was lost.

Mr. King's amendment was lost.

MR. DAVIS, of Brazos, offered to amend Section 13 by inserting, "of office and such other compensation." He said he was opposed to judges of county courts obtaining their salaries by fees and perquisites alone. It tended to create a cormorant to subsist and become bloated on the misfortunes of the people. He was opposed to a presiding officer getting his salary out of litigants, and would rather vote against the county court system altogether, than to establish one of that character.

MR. ROBERTSON, of Bell, opposed the amendment. It was the settled policy of the Convention to cut down the number of district judges to twenty-five, but this amendment would give the Legislature power to create 140 county judges. That was the question at issue, and the question involved in the amendment. It would be infinitely better to increase the number of district judges, for they carried an idea of fairness the others did not. He was utterly opposed to the legislative enactment of salaries for the county judges, and was opposed to the county court system as proposed in the amendment.

The amendment was lost.

MR. ALLISON moved an amendment for Sections 14 and 15. It contemplated a return to the probate system of the Constitution of 1845, and he said he was willing to have an amendment added to give to the Legislature power to grant still further jurisdiction to such courts.

MR. DOHONEY said he thought the substitute the same in principle as that of Mr. Flournoy, which had been voted down on the preceding Saturday.

The substitute was tabled.

MR. STAYTON moved to amend Section 18 by striking out "8,000." and inserting "12,000." It referred to the election of a single clerk, who should perform the duties of district and county clerk.

Mr. Stayton's amendment was adopted.

MR. DARNELL moved to reconsider the vote adopting the Stayton amendment, and was sustained.

MR. KILGORE moved to amend by making it "10,000." He said there was no more important office than that of county clerk. He offered that as a compromise, and he feared that the pay would be too small at that to secure the right kind of man.

Mr. Stayton's amendment was lost.

Mr. Kilgore's amendment was lost.

## SIXTY-FIRST DAY

### TUESDAY, NOVEMBER 16, 1875[118]

### *The Judiciary Article Engrossed*

MR. GERMAN moved to amend Section 19 by striking out "the next general election." and inserting "an election shall be held for the unexpired term."

MR. BROWN said he was opposed to the policy of holding special elections.

MR. GERMAN said he was opposed to them also, but thought they were better than having district attorneys appointed for two years.

The amendment was lost.

MR. STEWART offered a new section, giving power to two-thirds of the Legislature to pass a local law to extend to not more than ten counties in which appeals might lie directly from justices of the peace, county, and commissioners' courts to the district courts.

MR. MILLS said this was another thrust at the black man.

The amendment was lost.

JUDGE REAGAN moved the previous question on the engrossment of the article, and it was engrossed by a vote of 43 to 25.

### *General Provisions*

MR. MCCORMICK moved to strike out the clause in Section 1 with reference to dueling. He said he would never vote to disfranchise a man for fighting a duel or carrying a challenge. There were cases where a man's honor or that of his family was concerned, where he must fight or be branded as a coward.

MR. ALLISON said he thought the history of the past showed that dueling could be suppressed only by some provision of that sort.

The Convention, by a vote of 16 to 45, refused to strike out the section.

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[118] The proceedings for this day were taken from the *State Gazette* (Austin), November 17, 1875.

## SIXTY-SECOND DAY

### WEDNESDAY, NOVEMBER 17, 1875[119]

GENERAL WHITFIELD reported in favor of the requiring the Legislature to establish and maintain a state university. His report was ordered printed to the number of 100 copies.

COLONEL FORD reported an ordinance favoring the appropriation of 3,000,000 acres of the public domain for the erection of public buildings for the State. The Convention ordered printed 100 copies of the ordinance.

## SIXTY-THIRD DAY

### THURSDAY, NOVEMBER 18, 1875[120]

MR. BRUCE moved to reconsider the vote adopting the amendment of Mr. Barnett relative to regulating the practice of medicine.

DR. BLASSINGAME favored the resolution.

MR. JOHNSON, of Collin, opposed the resolution, and favored a reconsideration.

DR. BARNETT opposed a reconsideration.

The motion to reconsider was lost.

MR. MCCORMICK called up his proposed new rule, requiring ten men to call the yeas and nays.

MR. MILLS said it was a thrust at the minority on the floor.

MR. MCCORMICK denied the charge, saying that he only hoped to expedite the business of the Convention.

The article on general provisions was taken up.

MR. DARNELL moved to amend by striking out of Section 49 all after the word "law," and adding "nor shall they, or either of them, ever have the power to mortgage or execute a deed of trust on the same." He advocated the passage of the amendment. He said he was strongly in favor of protecting the wife's property from drunken and reckless husbands. He was advocating the same doctrine that Rusk and other patriots advocated in 1845, and that he himself had then advocated. He wished he could call back those dead patriots who had advocated that doctrine and hear their eloquent voices which would once more electrify the people of Texas. But that was impossible. He was the only member of that body present in the Convention then in session. He was old and weak and knew that he would soon be gathered in the great hereafter, with all his compatriots; but while he lived he intended to do all in his power in the cause he believed to be right.

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[119] The proceedings for this day were taken from the *Austin Statesman*, November 18, 1875.

[120] The proceedings for this day were taken from the *Austin Statesman*, November 19, 1875.

JUDGE REAGAN opposed the amendment.

MR. FLOURNOY supported the amendment. He pictured the sad effect of drunken and worthless husbands bringing their wives to want and poverty in case the amendment were not passed.

PRESIDENT PICKETT took the floor in favor of the amendment.

The article was ordered engrossed by a vote of 62 to 9.

## SIXTY-FOURTH DAY

### FRIDAY, NOVEMBER 19, 1875[121]

### *The Texas & Pacific*

The article on the Texas & Pacific proposed an extension of time to that railroad.

MR. DARNELL opposed the extension of time.

MR. NUGENT moved to add the following proviso to the bill: "and provided further that any reservation of the public domain heretofore made to said railroad, shall be opened to actual settlement under the preëmption laws of the State."

The amendment was adopted by a vote of 39 to 30.

JUDGE REAGAN, before the vote was announced, changed his vote to "aye" so as to move a reconsideration.

The vote having been announced, Mr. Nugent instantly moved to reconsider and table.

JUDGE REAGAN said he thought that was unfair, since Mr. Nugent had heard him express a desire to move a reconsider, and asked him in common fairness to give way.

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[121] The proceedings for this day were taken from the *State Gazette* (Austin), November 20, 1875.

Mr. Nugent said he refused to do so. If he gave way the House would be debating the question all day. Believing that the Convention had no more right to pass an ordinance extending time to the Texas & Pacific Railroad than the man in the moon, he was opposed to a reconsideration, and would persist in his refusal to withdraw his motion.

Mr. Kilgore moved a call of the House, and was sustained.

Pending the call, the House took up other business.

Judge Reagan offered the following as a new section for the article: "That all navigable waters of the State shall forever remain public highways, free to the citizens of the State, and of the United States, without tax, impost, or toll; and that no tax, impost, toll, or wharfage shall be demanded or received from the owner of any merchandising or commodity, for the use of the shores, or any wharf erected on the shores, or in, or over, any of said waters, unless expressly authorized by law."

Judge Reagan amended his section by inserting between the word "state" and "shall" the words "embracing those which form common boundaries between this State and other states, and boundaries between this State and Mexico."

Mr. Murphy moved to amend the section by adding, "Provided, that in no case shall this have the effect of impairing the obligation of contracts or deprive any citizen."

Judge Ballinger said that he had for many years been the attorney of the Galveston Wharf Company in matters of litigation at home. In no case had he mentioned the wharf company since he had been in Austin, unless it had been first mentioned to him. He had declined to discuss the subject other than in a public manner. He was not on that floor as the partisan of the wharf company, much less as their lobbyist. So far as the rights of the company were concerned, he should not discuss them there, except in a single instance. The last speaker had laid down the policy that no man should have the right to build wharves for the benefit of the commerce of the State, unless under the express authority of the law. He contrasted this with his own ideas of what he thought was good for the public interest and for the protection of the law. He quoted the opinion of the Supreme Court—Judge Roberts speaking the opinion of the court—in support of his position.

The House being full, the vote was taken on Mr. Nugent's motion to reconsider and table. The House refused to table by a vote of 21 to 47.

MR. STOCKDALE said he had no interest in the Texas & Pacific Railroad. He did not think it would have the effect of settling one hundred persons on their reservation. Neither would it affect the true interests of the road as far as getting the land was concerned. But if that amendment was put in the ordinance it would have the effect of opening it to settlement and prevent the company using it as a basis for their credit negotiations. The amendment would also be injurious to other roads, in one of which he felt the deepest personal interest, but as a matter of State policy they ought now to facilitate the building of a great road between the oceans, through the State of Texas, especially when it would accomplish no great benefit to others not to do so, and where it would destroy to a great extent, the accomplishment of the results they desired.

Judge Reagan's amendment was postponed, to come up when the report of the Committee on Private Corporation was considered.

MR. NUGENT spoke against reconsideration of the proposal to extend the time of the Texas & Pacific.

JUDGE REAGAN spoke in favor of reconsideration.

MR. DOHONEY protested against the action of certain members of the Convention in opposition to the best interests of the State, with reference to railroads. He advocated the extension of time to the road. He charged that the Convention would act in bad faith if it refused to reconsider.

MR. KING said he considered the rights of the few settlers who would settle in this reservation as subordinate to the great question of the necessities of the people. He regarded it as one of the greatest questions of State policy that had come before them. He spoke as a delegate not only interested in the welfare of his own people, but with concern for the interests of the entire country. He regarded Texas as the trustee of the South in its position regarding the greatest of modern enterprises. All of the states lying south and immediately north of the thirty-second parallel were looking to Texas in this matter, and were looking to the completion of this great enterprise. The Convention to meet at St. Louis on the twenty-third was a stupendous enterprise of the people of the South, and of the consolidated sections of the country, to secure the success of that road and to create a highway between the Atlantic and Pacific Oceans. Texas, holding the key to the position, ought not to raise her hand against it. He regarded the building of this road as the greatest enterprise of modern times. The United States had donated $100,000,000 worth of the public domain, and Texas—owning the only practicable route for the road—had contributed only one-fourth of the public domain that had been granted by the United States to the Union and Texas Pacific railroads. If constructed, tap lines would spread out in all directions like branches from the parent tree. He lived 200 miles south of the proposed line, and it would not reach his people during this generation, unless by the means of tap roads, but it would have the effect of solving the Indian problem, and would do more in that way than a cordon of United States soldiers from the Rio Grande to the Red River. The long line of settlements springing up would be invaluable in its protection, and could not be overestimated. In his opinion, the interests of a few settlers ought to be subordinate to the interests of the State itself.

Mr. Johnson, of Franklin, said he had no objections to railroads, but wanted them subordinate to the State. That being effected he was willing to help forward their interests as far as possible.

Mr. Barnett said he had come to Austin opposed to railroads, but after their action there, and taking into consideration the fact that they would shorten the time for the completion of the road to El Paso one-half by the extension of the time asked for, he was in favor of the ordinance.

Mr. German opposel reconsideration, and replied to the argument of Mr. Dohoney. He denied that they were acting in bad faith to the Texas & Pacific. It had forfeited all right to consideration by its failure to comply with the requirements of its charter, and ought not to expect relief from them. The Convention, too, had placed a clause in the Constitution requiring all railroads in the State to accept the provisions in the Constitution before they would grant them relief. To pass this ordinance would be to stultify this action. He opposed reconsideration.

Mr. McCormick said he favored reconsideration.

Mr. Weaver said he favored reconsideration, and favored the ordinance granting additional time to the railroad. The great financial crash had affected all railroads alike, and it could not be expected that the Texas & Pacific would escape.

MR. DILLARD moved the previous question and was sustained.

The vote adopting Mr. Nugent's amendment was reconsidered by a vote of 39 to 29.

MR. STOCKDALE moved to amend by adding the following to the ordinance: "and whereas said financial panic has had the same paralyzing effect on all other railway construction in this State; therefore, be it further ordained, that all railroad companies in the State are hereby granted twelve months time from the adoption of this Constitution framed by this Convention, to comply with the requirements of their charter, and for the construction of any part, or for the completion of the whole of the works to be done by any railway company, as required by the charter thereof."

JUDGE BALLINGER moved to amend by adding after Mr. Stockdale's amendment, that all railroads connecting with the Texas & Pacific should have all facilities for connecting and transporting freights and passengers that could be afforded by connecting railroads, and that freight and passengers to and from the Gulf coast by roads connecting with the Texas & Pacific should be carried by the latter at the same *pro rata* as to the extreme points of its own or other roads on the Atlantic and Pacific coast.

MR. NUGENT moved to amend Mr. Stockdale's amendment as follows: "It is hereby further ordained that said companies shall file in the office of the Secretary of State a full and complete acceptance of all the provisions of this Constitution applicable to railroads, before the relief herein provided shall take effect."

Mr. Nugent's amendment was adopted by a vote of 39 to 25.

MR. FLANAGAN moved to lay the whole matter on the table, but the House refused by a vote of 34 to 36.

MR. ABERNATHY moved to reconsider the vote refusing to table the ordinances and amendments regarding the Pacific Railroad, and his motion was carried.

The motion to table recurring, a call of the House was moved and carried. Pending the call, other business was taken up.

### *Revenue and Taxation*

MR. BROWN moved to amend by striking out of Section 13 all after the word "therefore" in line 19, and inserting "but in counties having 10,000, to be determined by the last preceding census of the United States, a collector of taxes shall be elected to hold office for two years, and until his successor shall have been elected and qualified."

Mr. Brown's amendment was adopted.

A number of other amendments were introduced and voted down, lacking a two-thirds majority.

The article was then passed by a vote of 40 to 32.

Mr. Flanagan's motion to lay on the table the ordinance and amendments concerning the Texas & Pacific Railroad was tabled by a vote of 40 to 28.

The article on apportionment was taken up on its third reading.

MR. MOORE moved to amend the provision for the thirty-eighth district by giving Burleson County one representative. It was a Democratic county as it then stood—"Washington and Burleson Counties shall elect one representative"—it was linked with Washington and would be compelled to accept such a representative as Washington would give her.

MR. BRADY: "What do you propose to do with the excess of population in Washington County?"

MR. MOORE: "Let them do without, I suppose."

MR. RENTFRO said that Burleson County had only 1,300 voters, while Washington County had 8,500. He inquired what had become of the local representation they had boasted of. It would be establishing a precedent which might in time come to be ruinous to the Democratic party itself. He asked in common fairness that the excess in Washington County might be allowed one representative.

MR. MOORE appealed to the Convention in behalf of Burleson County. It had been only a short time since a portion was cut off to make the county of Lee, and now it was proposed to consign them to Washington, or in other words, to keep them without representation at all. The intelligent people of that county desired representation, and the intelligent people of Washington County were willing for them to have it. It was for the Convention to decide.

MR. DEMORSE said there were some things which the Democratic majority could not afford to do. It could not afford to tarnish its fair name. He thought they ought to give Burleson County one representative and Washington County, on account of its excess of population, two.

Pending the question, the House adjourned.

## SIXTY-FIFTH DAY

### SATURDAY, NOVEMBER 20, 1875[122]

The pending question was Mr. Moore's amendment to give Burleson County one representative. It was lost by a vote of 20 to 40.

The apportionment article was then passed by a vote of 51 to 11.

### *Judiciary Article—Third Reading*

JUDGE BALLINGER moved to strike out of Section 2, line 24, "more" and insert "less," and after "dollars" the words "which shall not be increased or diminished while they are in office." He spoke of the case of Judge Wheeler, whose last days were embittered by the meagreness of his salary, and whose indigent circumstances had led to his unhappy end. Judge Hemphill was a bachelor and was therefore able to get along on a small salary, while Judge Lipscomb had been made comfortable by a wealthy marriage. He said these things in reply to the argument that their most eminent judges had not received high salaries.

The amendment was lost by a vote of 32 to 42.

The article was then passed by a vote of 40 to 20.

MR. JOHNSON, of Collin, introduced the following ordinance:

> "Be it ordained by the People of Texas in Convention Assembled, That in view of the financial misfortunes now existing, no railroad chartered or holding grants under this State, which has heretofore organized and commenced work in good faith, shall be considered as having lost any of its rights, privileges, or grants, prior to the close of the next session of the Legislature of this State, by virtue of the lapse of time between now and that time; and said Legislature has the power, if deemed compatible with the public interest, to grant such relief in time as is deemed best for the interest of the State; provided, that this ordinance shall not be so construed as to relieve railroad companies from compliance with the condition contained in this article of the Constitution in relation to railroads."

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[122] The proceedings for this day were taken from the *State Gazette* (Austin), November 21, 1875.

MR. GERMAN moved to refer the resolution to the Committee on Railroad Corporations.

MR. FLANAGAN: "I hope it will not be referred. It is known by the members of this Convention that our labors will soon come to a close, and I think if this were settled we would be ready to sign the Constitution at noon on Monday, and I am at a loss to see why we should not do so."

PRESIDENT PICKETT: "We want to do so if we can."

MR. FLANAGAN: "Yes, Mr. President, I think it is our duty to do so, and I have persistently worked with the President, knowing it to be to the interests of the country that we should adjourn at that time. Therefore, I hope that this ordinance will not be referred to a committee, which has virtually ceased to exist. We have performed all the duties we had to perform; our report has been laid before you, and therefore, virtually, our duties have been completed. If we desire to settle this question, let us do it this evening. It can as well be done on the extension of time to railroads as on any other question, or at any other time."

MR. GERMAN: "I withdraw my motion."

MR. FLANAGAN: "You can not do that."

MR. GERMAN: "I can, and I withdraw it, and move to lay the ordinance on the table."

MR. WEST: "No, sir, you can not do it. Mr. President, I favor adoption of the resolution. I was hoping that the gentleman from Fannin and myself might agree on something, and cast our votes the same way. I favor the adoption of the resolution, but do not understand what the proviso is that is talked about. If we are going to give relief to these railroads, let us do it like men, and I may as well say here and in my place as at any other time—because the Convention is sure to hear of it when the Constitution comes up for adoption, when the sentiment of the people will be adverse to your judgment—and it will be construed into hostility to railroads. The war made on railroads in Wisconsin, Illinois, and Pennsylvania may have had some reason in it. They had their roads and they had abuses which led to the war, but a war made by a country with only fifteen hundred and odd miles, and which needs 5,000 or nothing, and which should foster the building of railroads and the binding together of the interests of this great State, is folly, and so will the people write their verdicts when they come to pass upon it. Why should we not have the extension? Is any one to be benefited by a forfeiture of the charter? Nobody that I know of, not a human being. What harm can result then by an extension for a short time—until the Legislature meets and then—as the gentleman from Collin says—if these companies are corrupt, don't extend their time; but if they are going forward in good faith, going on with their work—and it is to their interest more than ours that they should do so—

let their time be again extended, but let us act like men and not like the fabled jackass who cut off his own nose to spite his face." (Laughter.)

MR. KING: "Like the member from Travis I hope the motion to refer this resolution will not prevail. It is short, clear, and plain, and I think it is a reflection on this body to suppose that there is a member on this floor who does not understand it fully and completely. Every member is fully prepared and can as well vote on this question now as on Monday next. The question is a great one. Vote this ordinance down and you have strangled—as I stated the other day—in my humble judgment, one of the greatest works of modern times; one in which every person in this city, State, and country is interested. I said that if the telegraph could flash the intelligence that this Convention had refused to pass this ordinance to extend the time to this railway (Texas & Pacific) and the others, and keeping their charters alive until the next meeting of the Legislature, it would carry pain to the friends of Texas all over the world, and would be a source of grief and disappointment to the friends of progress and the well wishers of Texas throughout the State and country. Having been a member of the Thirteenth Legislature, and familiar with the origin and passage of the bill giving the present grants of land to the Texas & Pacific, I say there is not one of its provisions which do not render it amenable to the Legislature. This ordinance does not relieve it of any of its obligations, and a proviso could state most stringently what was meant by the Convention, and guard against the interests of the State being in any way jeopardized in this matter."

MR. GERMAN: "As I stated a few days ago, my understanding has been all along that this was a Convention called by the people, and that it was for the purpose of framing a Constitution for the State of Texas. It was not for the purpose of legislating for the Texas & Pacific and other railroads. What will the people say if we take up this resolution and act upon it? They will say that the Legislatures heretofore have granted all and everything that any railroad asked for; that they have heretofore controlled all our Legislatures, but we thought we had elected men to draft a Constitution that they could not control, but we are mistaken. That is what the people will say. This is a question that we have no control over, and that we have nothing to do with whatever. It is fairly outside of our jurisdiction. We were not sent here for any such purpose. I think it is our duty to reject this resolution, and by permission I will withdraw my motion to refer."

Leave was given.

MR. GERMAN: "I now move to lay on the table."

MR. NUGENT: "I second it."

MR. KILGORE: "I move a call of the House."

**MR. FLANAGAN**: "We don't want it. If the Convention is willing to lay it on the table, all right. We do not ask to prolong this Convention beyond 12 o'clock on Monday."

**PRESIDENT PICKETT**: "The motion to lay on the table is in order."

**MR. FLANAGAN**: "Of course it is. We can beat them anyhow."

The motion to table was lost by a vote of 14 to 61.

**MR. DILLARD** moved the previous question, which was ordered by a vote of 52 to 20.

The question recurred upon Mr. DeMorse's amendment, which read as follows: "And further provided that this ordinance shall be submitted to the people of this State for their approval and shall have no effect if disapproved."

Mr. DeMorse's amendment was adopted by a vote of 41 to 34.

The ordinance was then passed by a vote of 40 to 26.

At the night session the article on county and county lands was engrossed, as was also the division of the powers of government, and the article appropriating lands for public buildings. These articles were passed under a suspension of the rules, and without debate.

## SIXTY-SIXTH DAY

### MONDAY, NOVEMBER 22, 1875[123]

The Committee on Printing and Contingent Expenses presented the following resolution:

"*Resolved*, That any newspaper in the State of Texas that will publish the Constitution about to be submitted to the people of the State for their ratification, not to occupy more than four weeks in its publication, the last issue not less than two weeks before the time fixed for voting on same, shall each receive as compensation for such publication the sum of $20 provided, that a satisfactory proof of such publication shall be made to the Secretary of this Convention, who shall pay the same out of the fund appropriated to pay the expenses of this Convention."

**MR. COOK**, chairman of the committee, said it was believed that a large proportion of the voters of the State would not have an opportunity of reading the Constitution as printed in pamphlet form before the election, as it was well known that the pamphlet would not be universally distributed, and the committee thought it would be well to publish it in the local newspapers of the State. It therefore recommended, that every newspaper that would publish the entire Constitution for four weeks, should receive $20. It was a poor compensation, it was true, but many papers would publish it whether compensated or not, and by the compensation proposed a larger number would publish it. It was assumed that fifty newspapers would publish it at $20 each, which would not amount to more than $1,000 to $1,500, which the committee deemed a wise expenditure of money in having the Constitution published throughout the entire State. It was well known that there was great opposition to the Constitution in advance of a knowledge of its provisions, and this publication would give the people of the whole State a knowledge of its provisions.

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[123] The proceedings for this day were taken from the *State Gazette* (Austin), November 23, 1875.

MR. WADE said he was opposed to publishing it in newspapers that would publish the Constitution for the pay and abuse it section by section. Why pay $20 for what could be obtained at 3½ cents a pamphlet? He thought they ought to publish 200,000 pamphlets and send one to every voter.

The resolution was lost by a vote of 29 to 30.

MR. MILLS offered the following: "Whereas at the close of the late Civil War, many citizens of the Southern States, unwilling to live under our National Government, betook themselves and their families to Brazil and there became impoverished, disappointed in their hopes, losing everything and enduring among strangers cruel hardships; and whereas, the President of the American Republic, learning of the distressed condition of these voluntary exiles, has at various times furnished them free passage to their native land and has recently dispatched a Government steamship to Brazil to provide for the free return to the United States of these unfortunates, therefore, be it

"Resolved, That the thanks of this Convention are due and are hereby tendered to the President of these United States, for the generous and considerate conduct thus displayed in behalf of Texans and other Southerners which has invested his name and personal character with enduring honor, and

"Resolved, That our presiding officer be instructed to convey to President Grant this expression of the feeling of this Convention."

MR. WEAVER said that, while making no objection to the resolution, he felt that if the exiles had stopped at home and struggled along with the rest, it might have been better for them and the country.

MR. ROBERTSON, of Bell, said he had no disposition to thank the President for merely performing the duties of his office. It was the oppression of the Government of the country that drove the exiles from their soil. The Government had had ten years to redeem its action, and if, at this late day, it had felt disposed to do it through the President, he was scarcely deserving of thanks. He hoped members would consider well their action before adopting the resolution.

JUDGE REAGAN said it was not an ordinary duty of the President. He supported the resolution.

JUDGE BALLINGER offered the following substitute for the Mills resolution:

"Resolved, That the Constitutional Convention of Texas tender thanks to President Grant for his efforts to assist the return of American citizens in distress, among whom were a number of citizens of Texas, from Brazil to the United States, and that the same be conveyed by the President of this Convention to President Grant."

MR. MILLS accepted the substitute.

MR. CRAWFORD: "It is a matter of regret to me that anything of this sort should be injected into this Constitution. It is true, many American exiles are in Brazil, but they left their country because the fortunes of war crushed them to the earth, and confiscation and oppression on the part of the Government drove them to it. Believing, under these circumstances, that after there had been a restoration of reason, that these exiles should have been invited to return to their homes, I deem it entirely unnecessary to thank the President for his action. I have fresh in my mind the memory of one man who came quite early from voluntary exile, who, when the war was going on, demanded men to follow the cross of Texas and him to the field. He was the very Marat of the South, and he invited them to follow his standard, and when all was over and the oppressions were too much for him, he left for foreign soil; and when this Government invited him to return to his home and he did return, there was no man who so delighted to oppress the people of Texas as this modern Marat (General W. H. Parsons). There is an example of the leniency of the Government. If there is one poor exile who is sent to his home, I rejoice in it, but not at the price of an abandonment of principle as the price of ship money from foreign shores. I will never consent to the abandonment of all that is held dear to the heart of a Texan, in order that cheap capital may be made for a third term in behalf of the President, and I move that this Convention, representing the sovereign will of the people of Texas, in justice to themselves and the poor and patriotic men who bowed their shoulders and necks to long years of cruelty, outrage, and wrong, that the cheap adulation conveyed in this resolution be laid upon the table."

MR. MILLS said he had never asked for an office, although men who were far less entitled to it had done so. He was a third term man, but did not want politics to have anything to do with the matter before the Convention.

Colonel Crawford's motion was lost by a vote of 24 to 38.

Judge Ballinger's substitute was adopted.

### *The Texas & Pacific*

MR. DARNELL said that at the beginning of the session he was understood as being opposed to railroads. He was not opposed to them. He was opposed to this road if it did not go on with its work, and as soon as his constituents informed him that the Texas & Pacific had contracted to build the road from Eagleford to Fort Worth his opposition had ceased. This was in accordance with the instructions from his constituency. He explained these matters to show that he had not acted inconsistently. He had been instructed to work for the extension of the road, and he had done so. If no relief was extended to that road on the first of January, their reserve would be thrown open to every class of certificate held by anybody or any number of persons, at the expense of the Pacific road. The Texas & Pacific road wanted the ordinance from that Convention to use before Congress. Without the extension they would go with poor grace before the United States Congress for favors. It was too late to say that the adoption of the ordinance sought to be abrogated was contrary to duty, after having passed the ordinance suspending the general election and providing for the holding of another. Supposing the Constitution were not adopted, where would they stand? They would have no Legislature, and the whole Government would be disorganized. They had the power to pass that ordinance, for it was adopted by a large majority, and if that was so what could prevent their adhering to the vote passing the one extending time to railroads? It was said that the charter would expire anyhow by the first of January, and the Legislature will not have met until the second Tuesday of that month. But there was only a few days difference there, while by the alteration of the day of election we have made it one of months, in which time its reserve would be swallowed up by the certificates of newer roads. All that was asked was that the Convention would not destroy this road but place it in the same condition with the next Legislature it would have been had it met in January. Why destroy the Texas & Pacific to build up other roads? He had voted for the other ordinance to postpone the election, and he hoped his friends would sustain the ordinance extending help to the Texas & Pacific. He could vote for both of them because there was nothing wrong with either. Texas wanted the road and would get it if the aid they asked for was granted them, and the people would be the beneficiaries.

MR. STOCKDALE said he believed that the Convention had the power to pass the ordinance postponing the action with reference to the election, and it had the power to pass the one extending time of the charter of railroads. He saw no distinction between the two cases as a matter of power. The object of the gentleman from Collin, who introduced the ordinance extending the charter of railroads, was in consequence of the Legislature not meeting in January, and the roads would be thereby injured. The question was simply whether the Convention would go back on its action and place all these roads in a worse condition than they would have been if the Legislature had met in January. Mr. Darnell had alluded to the fact that if the time was not extended to the Texas & Pacific its reservation would be opened to other roads and certificates. That was true, and to that extent he (Mr. Stockdale) was interested in favor of the reservation being left open, as the railways in his section would have the right to enter it and locate their certificates. If he properly construed the ordinance before the Convention, other railroad companies than the Pacific might go into the reservation and locate, and if the Constitution was defeated their locations became good; this made it practically to the interest of all the railroads in the country, except the Texas & Pacific, to defeat the Constitution. He had heard the argument made that if they adopted the ordinance they would get all the railroads to sustain it. On the contrary, it would be to the interest of the railroads to defeat it so as to enter the reserve, and because by the defeat of the Constitution the next Legislature would be left without authority to extend the time of the Texas & Pacific. So far as he knew the railroad men living in Texas, they would judge the Constitution abstractly from their own personal interests; but if they studied their own interests they would be bound to oppose it at any rate. Hence, the Convention was decidedly wrong if it imagined it would bring strength to the Constitution.

MR. NUGENT favored the ordinance and moved the previous question on its passage, and was sustained.

The ordinance passed by a vote of 42 to 31.

MR. STOCKDALE presented an ordinance submitting the Constitution to a vote of the people, and calling a general election of all State, county, and district officers under the new Constitution, the two elections to be held on the same day.

JUDGE BALLINGER moved to strike out the clause providing that the two elections should be held on the same day. It seemed to him that if the officers were elected on the same day as the election was held on the adoption or rejection of the Constitution, it would thereby secure the assent of every officer to be elected under it and the whole mass of office-holders. He, for one, thought his amendment would be honest and just to themselves, and urged that the Constitution should stand or fall on its own merits.

MR. BROWN said the Constitutions of 1836 and 1845 were voted upon at the same time officers under the proposed Constitutions were elected.

JUDGE BALLINGER produced proof to show that Mr. Brown was mistaken in the case of the Constitution of 1836.

MR. BROWN spoke of the last Constitution of Arkansas as an example.

Judge Ballinger's amendment was tabled.

The ordinance was then passed by a vote of 52 to 18.

## *General Provisions*

MR. WEST proposed to strike out of Section 52 the following: "provided, that the same shall be used for the purpose of a home, or as a place to exercise the calling or business of the head of a family."

He protested against the proviso. A man might build a magnificent hotel worth $50,000 and being a home it would be exempt. But if he built a house and rented a portion of it, living in the back part of it himself, the sheriff and creditors would come in. He thought the Convention had been deceived in adopting the amendment.

MR. STOCKDALE said it was at his suggestion that the provision was made, and there was no deception in it. He explained the provision at length.

MR. WRIGHT said he agreed with Mr. West. He spoke of a case which had come under his own observation, where a man had been accustomed to raise vegetables for his family. Thinking he could achieve the same object better by putting up a little store, he did so, and his creditors came in on him immediately.

MR. WEST said the section was rascally.

MR. STOCKDALE asked if the term was intended to apply to him.

MR. WEST said it was intended to apply to the section, and not intended personally. He also strongly condemned the difference between the town and county homestead.

The amendment was lost.

The article was passed by a vote of 50 to 13.

## SIXTY-SEVENTH DAY

### TUESDAY, NOVEMBER 23, 1875[124]

GENERAL WHITFIELD presented a supplementary report from the Committee on Education. It recommended that the Legislature provide for the maintenance and establishment of a university of the first class, to be located at or near the city of Austin, and to be styled "The University of Texas," for the promotion of literature and the arts and sciences, including an agricultural and mechanical department. The Agricultural and Mechanical College at Bryan was made a branch of the university, and the Legislature was directed at its next session to appropriate $40,000 for completing and placing it in successful operation. The report also provided for a branch university to be situated near Austin, for the benefit of the colored youth of the State. In addition to lands theretofore granted, the bill set apart 1,000,000 acres of the public domain for the endowment of "The University of Texas" and it branches, and for their support and maintenance.

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[124] The proceedings for this day were taken from the *State Gazette* (Austin), November 24, 1875.

MR. LOCKETT moved to strike out "Austin," with regard to the colored university, and insert "Brenham."

MR. WEST said he had no objection.

GENERAL WHITFIELD made no objection to the change, and the amendment was accepted.

MR. ROBERTSON, of Bell, moved to insert "or Salado" after the word "Austin."

The amendment was lost.

MR. SCOTT moved to strike out "near the city of Austin" and to insert "to be located by a vote of the people."

GENERAL WHITFIELD said that Mr. Scott might as well write the obituary of the University of Texas for the public press.

Mr. Scott's amendment was adopted.

MR. MCCORMICK moved to strike out "college or" and insert "a" in Section 5, and to insert after "Brenham," "which shall receive its equal share of the University fund of this State." He said the object was to place the colored university on the same footing as the others.

MR. STOCKDALE said they were not entitled by number to an equal share.

MR. MCCORMICK said he had estimated the negro population as about one-third as many as the white.

MR. STOCKDALE said that in a few years the colored population would not amount to one-fifth of the total.

MR. MCCORMICK said he meant in equal proportion, and finally withdrew that part of his amendment. The other part of his amendment was lost.

MR. MOORE moved to amend by adding after "locate" in line 19 the words "by commissioners to be appointed by the Governor as may be provided by law." He objected that the mode provided by Mr. Scott's amendment was not practicable.

MR. WEST said he would vote for Mr. Moore's amendment, as it was infinitely preferable to Mr. Scott's, but neither would meet the object the Convention had in view to provide for the establishment of a State university. He said he was not speaking in the interest of Austin, the main object being to locate the university somewhere. He called attention to the history of the university from its inception until 1875, and said it was impossible to contemplate it with satisfaction. As early as 1837 provision had been made for the university, and yet forty years had elapsed and time was still rolling over their heads, and not one stone of that university had been laid or even a site selected. In 1838 a magnificent site had been selected just beyond the capitol there, and if Texans had been true to themselves they would have had a university on that height years ago, and their youths would have been educated there instead of being sent to the North. Why did they not have a university? It was because of the petty squabbles that had been going on over its location. If they left the location to a vote of the people they would have forty or fifty locations proposed and none would get it. If it were left to the commissioners they would raise the same squabble and ill feeling that had been engendered over the penitentiaries. They should not lose their golden opportunity. If it could not be located at Austin, let it be put at Waco or Bryan. As long as it was left open they would have the eternal squabble, and they would have no university. He was one of the commissioners appointed in 1866, and they spent four days in discussion and then separated without having come to any conclusion. He trusted the amendment would prevail, to get rid of that of the gentleman from Cass (Mr. Scott), and that either the seat of government or some other site would be selected by the Convention.

Mr. Moore's amendment was lost by a vote of 27 to 35.

The bill was then engrossed by a vote of 32 to 31.

### *University Bill—Third Reading*

Under the suspension of the rules the university question was taken up on its third reading.

Mr. Cline moved to strike out all of the section after "location" in line 19, and to insert "to be located near the capital of the State." He said that the people did not want to be troubled with an election over a university any more than over the site of a Supreme Court or a pentitentiary. They had referred too many things to the people already, taking them from their business and putting questions before them to be voted on in which they had no interest. He thought the capital of the State the proper place for a university of the first class, for it was not to be a little high school or academy, but like those of Oxford, London, Cambridge, or Heidelberg, with museum and library attached. It would be of vast benefit to the Legislature and other public bodies assembling at the capital. They had felt the want of it in the Convention, and the Legislature always wanted works of reference. The railroads, when completed, would all center in Austin. It was the place where the public buildings were and where the interests of the public centered, where people came to look after their interests before the Supreme Court, the Land Office, and other public buildings. The point was healthy, one of the most beautiful in the State, reminding one of the Juanita Valley of Pennsylvania. It was above the reach of malaria and yellow fever. The fathers had selected that site above the capitol, and it was known as College Hill. Crown that hill with a seat of learning, and it would rise like crown of glory encircling the State. If left to the jealousies of different portions of the State there would be no university as long as they were on earth. The people of the State did not want it left to them to locate, and the amendment leaving it to them was a stab that would kill the university forever.

Mr. Cline's amendment was lost by a vote of 37 to 20.

The article was passed finally by a vote of 35 to 30.

### *Private Corporations*

MR. NUGENT offered the following additional section:

"Nothing in this article shall be construed to divest or affect rights granted by any existing grant or statute of this State or of the Republic of Texas."

MR. FLOURNOY opposed Mr. Nugent's amendment.

MR. STOCKDALE supported the amendment.

MR. WRIGHT opposed the amendment, somewhat at length. He argued that when the State granted a charter to a private corporation and gave them the right to charge tolls without specifying the maximum or minimum rate, it reserved the right to control its rate of charges. If the corporation abused its privilege, the State had the right to step in, and as a matter of public policy control the rates. The rule was that the law should always be construed strictly to the grantees, and all grants not expressly given were reserved expressly for the State. On this hinged his whole argument. If the State mentioned the maximum and minimum rates of charges, a corporation could, under such provision, go to the full extent, however oppressive it might be; but when they were not expressed, the State reserved her full power. If this were not so, Texas would be tied down to the chariot wheels of corporations; hence, when the charges were not specified, they were reserved to the State. If the Legislature authorized a railroad company by charter to charge 25 cents a mile, the State would not have the right to say to her, "you shall charge only so much"; but if it was not so expressed in the charter, the State could interfere in the interests of the people. The amendment struck at the very life of the second clause, which covered all these grounds. He referred to the Galveston Wharf Company. By its charter there was no express authority to charge tolls, but it was authorized to carry on business. No limit was specified, and hence he claimed that the State had the right to to regulate its rates. Suppose they charged $50 for a bale of cotton, or $10 for a barrel of flour, leaving the port; would any one pretend that the State had not the right, in the interest of the people to interfere, where there was no provision in the charter saying how much they should have? A man, though owning both banks of a river, could not carry on business without a license. Even private mills, in some states, were regulated as to their tolls, and it was useless to say that the rates of a private corporation could not be regulated by the government when it had no specific powers in its charter.

Some gentlemen went further than he and claimed the right of the State under any consideration to interfere in the interest of the people, but he confined himself to the limits specified in the charter. Some of the Supreme Court and district judges were going back on the Dartmouth College case. Even their own distinguished chief justice, Judge Roberts, believed that that case went too far. He reiterated his position. Without the right he claimed, the State would be at the mercy of any blighting, blasting corporation which had a hold on the liberties and the business of the people.

The wharf company held its site from the Republic of Texas. But when by establishing its wharves it opened a public highway, it was as much amenable to the police power of the State as would be a ferry, which by reason of its establishment opened a highway across a river; or as would be a bridge constructed across the Colorado. If constructed by individuals without a charter there could be no doubt of the State's right to interfere, and so they could with respect to charters, where the State reserved powers of sovereignty to itself. Instead of Galveston being the "Beautiful Isle of the Sea," of which all Texas felt proud, it would be a curse, and Texas would suffer from the enjoyment of such powers by the corporation. If it claimed to levy this toll at all, it must be by express charter, and if the right was given—it could not be presumed—it must be securely specified and set forth in the act of incorporation. Did it do it? It did not do it in a single instance, in his candid opinion. As far as the railroads were concerned, they asserted the right to interfere, and to regulate where they had no power to prevent it. They simply claimed the same right and power in private corporations to interfere for the public good unless expressly prevented by the terms of their charter. If a corporation undertook to tax the people—for it was a tax—and had no express authority to tax, it was preëminently a question of interference by the State to preserve her integrity, the rights and principles of liberty. Yield up this, and they yielded up the State of Texas, bound and chained, to a corporation. Texas was a great State—great in future contemplation—embracing a variety of soil and climate, and, as had been observed by him before, the sources of whose rivers were amid perpetual snows and whose outlets were amid perennial flowers. This outrage on the rights of the citizens would be a strange anomonly in the history of a great nation, and of a sovereign State, if it could be said that an incorporated company could bear down the courts of the people, yet when the people complained humbly to the law-making power and asked them to help them, that it would be unable to help them because its hands were tied.

JUDGE BALLINGER replied to Mr. Wright. He urged that the latter had disproved to a very large degree the soundness, the lawfulness, and truth of the report. He referred to Sections 3 and 5. The last clause especially, had been controverted by Mr. Wright. It claimed that "all laws granting the right to demand and collect freights, fares, tolls, or wharfage, shall at all times be subject to repeal by the Legislature." This was not the argument of the gentleman. He had said that in railroads where the rates were expressed they were beyond control of the State. Was that true? Then this report and his argument did not agree. Again he might say they had already gone the extent of the report in respect to railroads. Railroads, it was said, could be compelled to establish reasonable maximum rates for passengers and freight. This was a judicial question, not for a Legislature to decide, but to be decided on proof of truth in a court of law. He referred to Cooley's *Constitutional Limitations* in support of his argument. He claimed that where general power was given it was not subject to regulation by the State. The charter to a private company could not well be resumed, or its benefits diminished or impaired, unless the right was expressly reserved. Was the Legislature going to make these judicial functions apply to the rights and grants in existence at this time? If the Convention so declared, it would do what it had not the power to do; and it would, in his opinion, be a lawless, reckless usurpation of power, for it would be in violation of constitutional rights and respect for law. They had no power in the guise of making a Constitution to trample on the power of the general government and of universal right. The Supreme Court, in 1859, declared that the Galveston Wharf Company grant gave them a right to the fee simple of the land, just the same as a man had to the lot he occupied and used. It might be devoted to wharves, stores, cotton presses, or anything the owner of the soil desired, in which a man had the right to build wharves or anything else he liked. The reference to railroad bridges and ferries had no similarity to this case. It might refer to wharfage, if a man obtained a charter especially for wharfage; but the right of the Galveston Wharf Company was the right of fee simple to the soil, and for which they had the right to charge for a bale of cotton or aught else as a man had to charge for any other service. Was wharfage a franchise? Not in this case. If chartered as a wharf company then they had all the powers which were implied in a company to be subject thereto. The gist of the argument was that the company was private property and had a right to conduct its own business, on its own land, and to regulate its own charges, which if excessive would regulate themselves by the withdrawal of patronage.

MR. FLOURNOY said that they were not there to pass upon facts. Principles were what they had to settle. If the wharf company had right and principle on her side they were powerless to hurt her, but if she had not, then she came in not as a wharf company but as one of the persons described in this bill, and that was all there was in it. The bill said nothing about the wharf company. It was a mere declaration of the broad principles of law, a mere declaration that the Legislature should provide the mode procedure by the county and district attorneys and the Attorney-General, to ascertain if the charges were made by the authority of law. It was not to divest any man of his rights, to injure widows and orphans, or to strike down the prosperity of the leading city of the State. They asserted merely the right to inquire into the authority of any company to levy a tax—for it was a tax when they charged toll upon anything of public use. A man might open a highway across his own land, but once opened it could not be closed by a gate, nor could he charge for it or run a stream through it, or bridge it over. He had not intended to go into a discussion of the rights and wrongs of the wharf company, in which he had not a cent's interest either way. All he had done was, when, at the request of the mayor of Galveston, he had endeavored to arrange an amicable agreement between them and the city of Galveston, and failed and published an opinion thereon. The law was not the science of principles, but the science of exceptions. The great feature of the common law was its flexibility and adaptability to the wants of the time, and all that was desired in this bill was to make it conform to the present elements of society and the needs and requirements of the State. He held that the bill was not retroactive and was intended to guard the interests of the State in the future rather than affect the past. He thought there was nothing in it calculated to have brought out this discussion, and he was sorry so much time had been wasted on it.

MR. STEWART opposed the views of Mr. Flournoy.

Mr. Nugent's amendment was adopted, and the bill engrossed.

## SIXTY-EIGHTH DAY

### WEDNESDAY, NOVEMBER 24, 1875[125]

The last day of the Convention was free from debating, and was taken up with the necessary routine matters.

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[125] The proceedings for this day were taken from the *State Gazette* (Austin), November 25, 1875.

MR. JOHNSON, of Collin, rose to a question of privilege. He had been assailed in that body and throughout the whole State. Some one had sent the report to his home paper that he had chosen to sit among the negroes in the Convention. He would like to know what member of the Convention had done this. He had had to take the seat he had drawn, though he would have preferred to be somewhere else. He had carried every point he had started out with when he left his county. They had "fit" the opposition carefully and beaten them. There were thirty-six lawyers in that body, but they had been superior to them. They had beaten the talent of the Convention all along the line.

MR. WEST and twelve other members entered a protest in the journals against certain parts of the homestead clause in the general provisions.

MR. DEMORSE had entered upon the journals a protest against the passage of the ordinance on private corporations.

MR. WEST filed a protest against the judiciary article. He claimed that the low salaries would exclude the best legal talent in the State.

MR. FLOURNOY, COLONEL FORD, and others presented a memorial to the United States Congress, requesting frontier protection. The Convention voted to print 500 copies, and to request the Governor to send a copy to the President of the United States, and to the Governor of each state in the Union.

JUDGE BALLINGER filed his protest against low salaries and an elective judiciary, as provided in the Constitution. His protest was printed in the journal.

MESSRS. ABNER, MCCABE, AND REYNOLDS (colored) entered their protest against newspaper reports that the colored men in the Convention had been controlled by Mr. Mills. Their protest was entered on the journal.

The clerk began to read the Constitution at 4 o'clock. The reading was finished at 7 o'clock.

The final vote on the adoption of the Constitution was 52 to 11.[126]

After a short farewell address by the President, which was printed in the journal, the Convention was declared adjourned *sine die*.

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[126] The "nays" included the following: Ballinger, Brady, Cline, Cooley, Lockett, Mitchell, Murphy, Renfro, Reynolds, Smith, and West.

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